

STATE OF DELAWARE



DELAWARE DEPARTMENT OF TRANSPORTATION

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM PLAN

March 2006



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DELAWARE DEPARTMENT OF TRANSPORTATION

DBE Program

49 CFR Part 26

I. INTRODUCTION

On February 2, 1999, the United States Department of Transportation (U.S. DOT) issued a final rule on the participation of Disadvantaged Business Enterprise (DBE) firms in U.S. DOT programs. Since the initial promulgation of the final DBE rule, there have been several updates, clarifications, and revisions to the DBE Rule. The most recent and complete revisions to the final Rule were published in the Federal Register / Vol. 68, No. 115 on Monday, June 16, 2003 / Rules and Regulations. The revised rule included significant changes to key provisions that cause major changes to how the Delaware Department of Transportation (DelDOT) implements the DBE Program. This revision of DelDOT's DBE Program Plan is in accordance with the DBE Rules published in the June 16, 2003 edition of the Federal Register and incorporates all previous revisions to the DBE Rule. The major objectives of the program are:

1. To ensure nondiscrimination in the award and administration of DOT- assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for and participate in DOT- assisted contracts and/or subcontracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in DOT-assisted contracts;
6. To assist the development of firms that can compete successfully in the market place outside the DBE Program; and
7. To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

The United States Department of Transportation has changed the manner in which its recipients of financial aid must attempt to involve small business enterprises in transportation projects. Each state's Department of Transportation, including its operating elements, must, in order to qualify for continued financial assistance, enact and carry out a Disadvantaged Business Enterprise Program, which conforms to the new rules. Following is the program, which has been developed by the Delaware Department of Transportation (DelDOT).

In addition to this plan, firms must comply with all provisions of the rules and regulations adopted by the U.S. Department of Transportation for DBE participation in U.S. DOT

financially assisted contracts (Attachment A 49 CFR Part 26) and the Delaware Department of Transportation Disadvantaged Business Enterprise Program. Bidders are also reminded that they must be responsible and responsive bidders in all other aspects aside from the DBE Program in order to be awarded contracts.

In order to remain within the confines of 49 CFR Part 26, and the State's bidding statutes, however, the sections of the program dealing with contract clauses, overall and contract goals, certification requirements, and awarded selection procedures, shall pertain only to United States Department of Transportation financially assisted contracts.

II. OBJECTIVES/POLICY STATEMENT (26.1, 26.23)

The Delaware Department of Transportation (DelDOT) has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. DelDOT receives Federal financial assistance from the U.S. Department of Transportation, and as a condition of receiving this assistance DelDOT has signed an assurance that it will comply with 49 CFR Part 26. It is the policy of DelDOT to ensure that DBEs, as defined in part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also our policy:

1. To ensure nondiscrimination in the award and administration of DOT- assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for and participate in DOT- assisted contracts and/or subcontracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in DOT-assisted contracts;
6. To assist the development of firms that can compete successfully in the market place outside the DBE Program; and
7. To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

The DBE Program Manager has been designated as the DBE Liaison Officer for DelDOT and will serve as the focal point for the DelDOT plan, but will work in conjunction with the appointed DBE Liaison Officer for the Delaware Transit Corporation that being the Statistics and Contract Administration Manager. It is the responsibility of this position to implement all aspects of the DBE program for the FHWA portion of the program. The Delaware Transit Corporation (DTC) appointed DBE Liaison Officer will implement the FTA portion of the program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by DelDOT in its financial assistance agreements with the U.S. Department of Transportation.

DelDOT has disseminated this policy statement to the Directors of each division within DelDOT and all the components of our organization. We have distributed this statement to the DBE and non-DBE business communities that perform work for us on DOT-assisted contracts via advertisement in the Delaware Capitol Review, by sending direct mail notifications to those vendors, contractors, consultants, and suppliers registered with DelDOT and by posting on the Delaware Transit Corporation website.



Carolann D. Wicks, Secretary
Delaware Department of Transportation

Date: 3/21/06

III. DEFINITIONS OF TERMS

The terms used in this program have the meanings defined in 49 CFR 26.5.

Affiliation has the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR part 121.

1. Except as otherwise provided in 13 CFR part 121, concerns are affiliates of each other when, either directly or indirectly:
 - a. One concern controls or has the power to control the other; or
 - b. A third party or parties controls or has the power to control both; or
 - c. An identity of interest between or among parties exists such that affiliation may be found.
2. In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the DBE program.

Alaska Native means a citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut blood, or a combination of those bloodlines. The term includes, in the absence of proof of a minimum blood quantum, any citizen whom a Native village or Native group regards as an Alaska Native if their father or mother is regarded as an Alaska Native.

Alaska Native Corporation (ANC) means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, et seq.).

Compliance means that a recipient has correctly implemented the requirements of this part.

Contract means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them.

Contractor means one who participates, through a contract or subcontract (at any tier), in a DOT-assisted highway, transit, or airport program.

Department or DOT means the U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).

Disadvantaged Business Enterprise or DBE means a for-profit small business concern –

1. That is at least 51 percent owned by one or more individuals who are both socially

- and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and
2. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

DOT-assisted contract means any contract between a recipient and a contractor (at any tier) funded in whole or in part with DOT financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land.

DOT/SBA memorandum of understanding or MOU refers to the agreement signed on November 23, 1999, between the U. S. Department of Transportation (U.S. DOT) and the Small Business Administration (SBA) streamlining certification procedures for participation in SBA's 8(a) Business Development (8(a) BD) and Small Disadvantaged Business (SDB) programs, and DOT's Disadvantaged Business Enterprise (DBE) program for small and disadvantaged businesses.

Good faith efforts means efforts to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

Immediate family member means father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, father-in-law.

Indian tribe means any Indian tribe, band, nation, or other organized group or community of Indians, including any ANC, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or is recognized as such by the State in which the tribe, band, nation, group, or community resides. See definition of "tribally-owned concern" in this section.

Joint venture means an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

Native Hawaiian means any individual whose ancestors were natives, prior to 1778, of the area, which now comprises the State of Hawaii.

Native Hawaiian Organization means any community service organization serving Native Hawaiians in the State of Hawaii, which is a not-for-profit organization, chartered by the State of Hawaii, is controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.

Noncompliance means that a recipient has not correctly implemented the requirements of this part.

Operating Administration or OA means any of the following parts of DOT: the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and Federal Transit Administration (FTA). The “Administrator” of an operating administration includes his or her designees.

Personal net worth means the net value of the assets of an individual remaining after total liabilities are deducted. An individual’s personal net worth does not include: The individual’s ownership interest in an applicant or participating DBE firm; or the individual’s equity in his or her primary place of residence. An individual’s personal net worth includes only his or her own share of assets held jointly or as community property with the individual’s spouse

Primary industry classification means the North American Industrial Classification System (NAICS) designation that best describes the primary business of a firm. The NAICS is described in the *North American Industry Classification Manual – United States, 1997*, which is available from the National Technical Information Services, 5285 Port Royal Road, Springfield, VA, 22161; by calling 1 (800) 553-6847; or via the Internet at <http://www.ntis.gov/product/naics.htm>.

Primary recipient means a recipient, which receives DOT financial assistance and passes some or all of it on to another recipient.

Principal place of business means the business location where the individuals who manage the firm’s day-to-day operations spend most working hours and where top management’s business records are kept. If the offices from which management is directed and where business records are kept are in different locations, the recipient will determine the principal place of business for DBE program purposes.

Program means any undertaking on a recipient’s part to use DOT financial assistance, authorized by the laws to which this part applies.

Race-conscious measure or program is one that is focused specifically on assisting only DBEs, including women-owned DBEs.

Race-neutral measure or program is one that is, or can be, used to assist all small businesses. For the purposes of this part, *race-neutral* includes gender-neutrality.

Recipient is any entity, public or private, to which DOT financial assistance is extended, whether directly or through another recipient, through the programs of the FAA, FHWA, or FTA, or who has applied for such assistance.

SBA certified firm refers to firms that have a current, valid certification from or are recognized by the SBA under the 8(a) BD or SDB programs.

Secretary means the U. S. Secretary of Transportation or his/her designee.

Set-aside means a contracting practice restricting eligibility for the competitive award of a contract solely to DBE firms.

Small Business Administration or SBA means the United States Small Business Administration.

Small business concern means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in § 26.65 (b).

Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is –

1. Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis.
2. Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
 - a. “Black Americans,” which includes persons having origins in any of the Black racial groups of Africa;
 - b. “Hispanic Americans,” which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
 - c. “Native Americans,” which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
 - d. “Asian-Pacific Americans,” which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
 - e. “Subcontinent Asian Americans,” which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
 - f. Women;
 - g. Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

Tribally owned concern means any concern at least 51 percent owned by an Indian tribe as defined in this section.

You refers to a recipient, unless a statement in the text of this part or the context requires otherwise (i.e., “You must do XYZ” means that recipients must do XYZ).

IV. GENERAL TERMS

– Throughout this plan where DelDOT is stated it means that provision applies to both the FHWA portion of the program and the FTA portion of the program. In the instance where Delaware Transit Corporation (DTC) is stated only that provision applies to DTC solely.

Nondiscrimination. (26.7)

DelDOT will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin.

In administering its DBE program, DelDOT will not, directly through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE program with respect to individuals of a particular race, color, sex, or national origin.

DBE Program Updates (26.21)

DelDOT will continue to carry out this program until all funds from the Federal financial assistance have been expended. DelDOT will provide to U.S. DOT updates representing significant changes in the program.

Non-Compliance Complaint Process (26.103)

Should any person believe this recipient has failed to comply with its obligations under 49 CFR Part 26 they may file a written non-compliance complaint with U.S. DOT Office of Civil Rights within 180 days after the date of alleged violation in accordance with the provisions of 49 CFR Section 26.103.

Quotas (26.43)

DelDOT does not use quotas in any way in the administration of this DBE program.

DBE Liaison Officer (DBELO) (26.45)

The Secretary has designated a DBE Program Manager as the DBE Liaison Officer for DelDOT and will serve as the focal point for the DelDOT plan, but will work in conjunction with the appointed DBE Liaison Officer for DTC. The DBE Program Manager is responsible for implementing all aspects of the DBE program and ensuring that DelDOT complies with all provisions of 49 CFR Part 26 for the FHWA portion of the program. The DTC DBE Liaison Officer, being the Statistics and Contract Administration Manager is responsible for implementing the DBE program for the FTA portion of the program. The DBE Program Manager has direct, independent access to the Secretary of DelDOT concerning DBE program matters. The DBE Program Manager has a staff of 2 professional employees assigned to the

DBE program on a full-time basis, and one full-time support position. An organization chart displaying the DBE Program Manager's position in the organization is found in Attachment B.

The DBE Program Manager is responsible for developing, implementing and monitoring the DBE program; in coordination with the section Administrator and other appropriate DelDOT officials. Duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
4. Reviews DOT-assisted contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.
5. Analyzes DelDOT's progress toward goal attainment and identifies ways to improve progress.
6. Participates in pre-bid meetings and preconstruction meetings.
7. Advises DelDOT CEO/governing body on DBE matters and achievement.
8. Participates with the legal counsel and section administrator to determine contractor compliance with good faith efforts.
9. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance, when requested.
10. Plans, coordinates and participates in DBE training seminars.
11. Certifies DBEs according to the criteria set by U.S. DOT.
12. Provides outreach to DBEs and community organizations to advise them of opportunities.
13. Maintains DelDOT's updated directory of certified DBEs.

The DTC DBE Liaison Officer has the responsibility of items 1 – 8 above. The primary duties of the DBE Construction Specialists consist of providing technical assistance to any DBE firm certified with DelDOT, monitoring the work performed on the various DelDOT projects, collecting statistical information to support the FHWA reports, and collaborating with the DBE Program Manager in the certification process of DBE firms.

The DBE Office has the responsibility of monitoring payments to DBE firms submitted to meet goals on a contract. The prime contractor is required to submit proof of payments to DBE firms on a quarterly basis. These payments must be on a contract-by-contract basis, individual checks for each contract is a must when the same DBE firm is contracted on several jobs for the same prime. Notification is sent to each prime contractor advising them to send copies of canceled checks for payments to DBE contractors, these records are maintained in the DBE Office until the contract has been completed and accepted by DelDOT. DelDOT will compare the amount shown on the CN-91 forms with the cancelled checks in order to confirm proper payments to DBE subcontractors.

Federal Financial Assistance Agreement Assurance (26.13)

Each financial assistance agreement DelDOT signs with a DOT operating administration (or a primary recipient) will include the following assurance:

DelDOT shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. The recipient's DBE Program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the DelDOT of its failure to carry out its approved program, the Department may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

DBE Financial Institutions

It is the policy of the DelDOT to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contracts to make use of these institutions. DelDOT has identified that through federal regulations most banks offer Community Reinvestment Act (CRA) loans to individuals and businesses. DBE firms should contact a bank of their choice to investigate this program. In addition, firms may contact either the Small Business Administration 824, Market Street, Wilmington Delaware, 19801, (302) 573-6294 or the U.S. DOT Office of Small and Disadvantaged Utilization (OSDBU), 400 7th Street SW, Room 9414, Washington DC 20590, (800) 532-1169, for capital information. Information on the OSDBU Regional Center (whose geographic area includes DE), and the services they provide, can be viewed at http://osdbu.dot.gov/about/Regional_centers.cfm#er. The following banking institution is minority owned and operated:

United Bank of Philadelphia
Center City Business District
714 Market Street
Philadelphia, Pennsylvania 19106-2397
(215) 829- BANK

Information on the availability of such institutions can be obtained from the DBE Program Manager.

Directory (26.31)

DelDOT maintains a unified directory identifying all firms eligible to participate as DBEs on contracts funded by the Federal Highway Administration, the Federal Transit Administration, and the Federal Aviation Administration. The Delaware Unified Directory of Certified DBE Firms lists the firm's name, address, and telephone number, and the firm's area of work. The Delaware Unified Directory of Certified DBE Firms is made available by providing hard copies for walk-ins; sending hard copies to any interested callers; and sending hard copies to the Delaware Contractors Association (DCA), the Minority Business Association (MBA), and the Consulting Engineers Council (CEC). The Delaware Unified Directory of Certified DBE Firms is updated as changes occur and available on DelDOT's website at www.deldot.net. Go to: Doing Business with DelDOT, scroll down to the External Civil Rights Program section, then click on Disadvantaged Business Enterprise Program, then click on the fifth bullet for the electronic version of DelDOT's Unified Directory of Certified DBE Firms. Interested parties may also write to: Department of Transportation, DBE Office, P.O. Box 778, Dover, DE 19903 or call the DBE Office at (302) 760-2035 to obtain a copy.

DelDOT is currently the only certification office responsible for maintaining a Unified Directory of Certified DBE Firms to participate on Federal Aid Projects

Overconcentration (26.33)

At this time DelDOT has not identified an overconcentration in any one element. This area will be continually monitored to determine if an issue exists and if so develop a strategy to resolve this issue.

Business Development Programs (26.35)

DelDOT includes its mentor protégé program as an option that may be suggested or used if the appropriate circumstances arise.

Mentor-Protégé Program Description

The mentor/protégé program is an approach available to assist the Department and contractors/consultants to meet the requirements of 49 CFR Part 26, and this Program. It affords the opportunity to gain information and experience in a productive work situation to established DBEs working to expand their present capacity, and to less experienced DBEs needing training and assistance. The full program description is in Attachment D.

1. The requirements for the establishment of the mentor/protégé relationship are as follows:
 - a. It is the responsibility of the mentor to establish that the DBE protégé meets the certification requirements of the DBE program and is, therefore, eligible for participation in the mentor/protégé program. Approval of the DBE application for

certification may be made concurrently with the approval of a mentor/protégé relationship.

- b. The DBE firm must be an independent organization, the ownership and control by the disadvantaged individual(s) must be real as outlined by 49 CFR Part 26.
 - c. The mentor/protégé program is intended to provide DBE firms with advice and assistance and/or training. The program is not intended to provide DBEs with a means to avoid management and operational responsibilities. The mentor cannot be responsible for the management of the DBE at facilities or locations under the control of the DBE. Such facilities or locations may be provided by the mentor, however, a separate written lease agreement covering such arrangements should be utilized and submitted for approval. The mentor and the DBE must remain separate and independent business entities.
 - d. Part ownership in a DBE by a non-disadvantaged entity is permitted. However, the DBE shall not hold less than 51% of its own stock. Any property, equipment, supplies, or other services which are sold, rented, or donated to the DBE as well as any investment by non-disadvantaged individuals must be reported to DelDOT in the mentor/protégé development plan and should further be documented by bills of sale, lease agreements, etc. No financial investment by the mentor may create a situation in which the mentor may assume control over the protégé.
 - e. The mentor/protégé relationship may include, when not in conflict with State law, an arrangement by mutual consent in which an independent third party, such as a bank or an accountant, is designated as an agent for the DBE. Such agents would receive progress payments for work accomplished by the DBE, and make payments, on behalf of the DBE, to material suppliers or for Federal and State payroll taxes, etc.
2. All mentor/protégé relationships must be evidenced by a written development plan and be approved by the DBE Program Manager. Copies of the plan must be retained by DelDOT and all concerned parties. The plan should clearly set forth:
- a. The objective of the parties and their respective roles.
 - b. The length of time the relationship is to exist, e.g., or for the duration of a specified contract or series of contracts.
 - c. Measurable goals to be reached by the DBE at successive stages of the plan.
 - d. Whether resources of the mentor are utilized by the DBE in the performance of contracts or subcontracts for the mentor or for another contractor/consultant, the resources must be separately identified, accounted for, and compensated directly by the DBE to the mentor. If the plan provides for the extensive use of the mentor's resources by the DBE, the arrangement will be closely scrutinized.
 - e. The training to be provided by the mentor to the DBE, may include:
 - 1. Business Planning and Financial Counseling

2. Capital Formation and Loan Packaging
 3. Bidding and Record Keeping
 4. Equipment Utilization
- f. A provision that the relationship may be terminated by mutual consent or by the Department, upon a determination that:
1. The protégé firm no longer meets the eligibility standards for certification as a DBE.
 2. Either party has failed or is unable to meet its obligations under the development plan.
 3. The DBE is not progressing or is not likely to progress in accordance with the development plan.
 4. The DBE has reached a satisfactory level of self-sufficiency to compete without resorting to special treatment provided in the development plan.
 5. The plan or provisions thereof are contrary to the requirements of Federal, State, or local laws or regulations, or otherwise inimical to public policy.
- g. A provision that either party at may dissolve the arrangement at will by notifying the Department.

Required Contract Clauses (26.13, 26.29)

Contract Assurance

DelDOT will ensure that the following clause is placed in every DOT-assisted contract and subcontract:

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.

Prompt Payment

DelDOT will include the following clause in all prime contracts:

The prime contractor/consultant receiving payments shall, within 30 days of receipt of any payment, file a statement with the Department on a form to be determined by the Department that all subcontractors furnishing labor or material have been paid the full sum due them at the stage of the contract, except any funds with held under the terms of the contract as required by Chapter 8, Title 17 of the Delaware Code annotated and as amended. Any delay or postponement of payment from the above referenced time frame

may occur only for good cause following written approval of the DelDOT. This clause applies to both DBE and non-DBE subcontractors.

Retainage

DelDOT will include the following clause in all prime contracts:

The Department does not withhold retainage from regular payments made to the contractors. In accordance with Del Code Title 17 Chapter 8, contractors are not permitted to withhold retainage from subcontractors on contracts that do not include retainage for the contractor.

The DBE Program Manager is responsible for verifying that payments are being made in a timely manner to DBE firms for FHWA assisted projects. The DTC DBE Liaison Officer will be responsible for payment verification on FTA assisted contracts. The DBE Staff will coordinate with the appropriate department personnel responsible for the project to verify timely payments to DBE and non-DBE subcontractors. Discussion on this clause will be part of each pre-construction meeting for construction contracts and the administrative process meeting for consultant contracts and/or vendor/supplier contracts.

Administrative Resolution for Prompt Payment Issues

If a prime contractor/consultant is identified as having potentially violated this section, the DBE Program Manager for FHWA assisted projects or the DTC DBE Liaison Officer for FTA assisted projects, in coordination with the appropriate personnel, will conduct a full investigation of the facts. Findings of facts will be reported to the Contract Services Administrator and appropriate Section head for FHWA assisted projects or the Chief Financial Officer and Executive Director of DTC. Sanctions applied to the violations are as follows:

1st Violation – The prime contractor/consultant will be closely monitored by the DBE staff for 3 months following the finding to note any improvements. Should this situation not occur again the prime will remain in good standing.

2nd Violation – (on the same project or on a different project) – A meeting will be held with the appropriate department representatives and the prime's representative to fully discuss the matter and develop a written course of action to be followed. This action could consist of:

1. Monitoring by region or maintenance district only to identify improvement; report to Contract Services Administrator or Chief Financial Officer of DTC as appropriate.
2. A notice to monitor sent to all appropriate Department Personnel where this prime has an active contract. Progress to be tracked and reported monthly to the Contract Services Administrator.
3. If no improvement is made future participation on new projects will be suspended for 6 months.

3rd Violation – Suspension of participation in future projects for 1 year and DelDOT will not approve any subcontracts for this firm for the same time period.

4th Violation – Should it be determined by DelDOT that a prime has violated this clause and the Delaware Code, the matter will be turned over to the Attorney General's Office for action. The firm's privileges will be suspended until the Attorney General's Office has reached a determination.

Monitoring and Enforcement Mechanisms (26.37)

A. Project Monitoring

1. Counting DBE participation toward the DBE goal.

- a. If a DBE firm will be manufacturing material and/or supplying labor and installing material they are considered a subcontractor and the total value of their subcontract will count towards the total project goal.

Note: Manufacturer – is a firm that operates or maintains a factory or establishment that produces on the premises the materials and supplies obtained by the contractor.

- b. If a DBE firm is a regular dealer and only supplying the material/supplies to the job for another firm to use then 60% of the value provided by these entities is counted toward the goal.

Note: Regular Dealer- is a firm that owns, operates, or maintains a store, warehouse or establishment in which the materials or supplies required for the performance of the contract are purchased, kept in stock, and regularly sold to the public in the usual course of business. To be considered a regular dealer, the firm must engage in, as its principal business and in its own name, the purchase and sale of the products in question. A regular dealer in such bulk items as steel, cement, gravel, stone and petroleum products need not keep such products in stock, if it owns or operates distribution equipment.

2. For competitively bid projects the prime contractor will have 10 days from the date of bid to submit for approval a list of the DBE firms to be used, an original of the subcontract agreement executed by both parties identifying the items for each firm and their individual value, and the total value of all subcontracts. These agreements will be reviewed for compliance with the State and Federal laws and with the DBE Program plan.

For quality-based selection projects, such as consultant services, consultants will submit a list of DBE firms intended for use on the project with their Expression of Interest. Upon completion of the selection process the successful consultant will have 10 days from the notice of selection to submit executed subcontract agreements identifying the type work and its value. These agreements will be reviewed for compliance with the State and Federal laws and with the DBE Program.

3. Upon approval of the prime contractor's and/or prime consultant's submittal the appropriate District personnel and/or project manager will be provided copies of the agreements for their subcontract tracking purposes.
4. For each DOT-assisted project a DBE office representative will attend the preconstruction meeting or initial consultant kick off meeting to discuss the DBE monitoring procedures, and to provide the prime contractor with the required Federal information to be posted on the project. The DBE Construction Specialists will visit each construction project not less than 2 times per month to observe the DBE firms performance, review payrolls and receipts for supplies and materials and assist the DBE firm with issues and concerns on the project. The DBE Specialist will monitor DBE consultant's progress at least on a quarterly basis to review performance and assist with issues and concerns.
5. In those instances when it may become necessary for the prime contractor/consultant to ensure payment to a supplier on behalf of a DBE firm, authorization must be approved by the District Engineer or Project Manager in conjunction with the DBE Program Manager prior to payment. Payment may be made to the subcontractor and the supplier by a joint-endorsement-required check.
6. Replacements/Substitutions of DBE's – The prime contractor/prime consultant is required to have a valid arrangement with the DBE(s) designated in the proposal to fulfill the contract goal. The prime contractor/consultant may not terminate the agreement for the convenience of the prime contractor/consultant. The prime contractor/prime consultant will be allowed to substitute for the originally-designated DBE(s) only if it is demonstrated to DelDOT's satisfaction that the said DBE(s) is unwilling or unable to perform contracted work. The contractor's/consultants ability to negotiate a more advantageous contract with another subcontractor will not be considered a valid basis for the substitution. If DelDOT deletes or reduces the DBE's intended work, the prime contractor/consultant shall not be required to designate other items for DBE participation; however the prime contractor/consultant will be encouraged to do so. Other DBE commitments on the project remain in effect.

Under no circumstances will a prime contractor/prime consultant be allowed to perform work designated for a DBE except in those extreme (or emergency) circumstances where it becomes necessary to perform a particular contract item (such as traffic control, erosion control) or the Construction Inspector determines that the item must be completed to a point to protect the public's safety. Once the circumstance has been stabilized, the prime contractor/prime consultant is required to identify additional work for the contracted DBE equaling the value of work performed by the prime; or replace the DBE with another DBE; or to exert a good faith effort. The prime contractor/prime consultant must receive written approval from DelDOT to perform the work with his/her own forces or with a non-DBE firm.

The role of the DBE Office is to insure that Disadvantaged Business Enterprise firms perform the work for which they have been contracted. The monitoring of this work will

be accomplished in coordination with Construction Inspectors and Project Managers on the project.

- B. Payment Monitoring – The DBE Office shall monitor all aspects of the contractual relationship between Primes and DBE's. Part of this monitoring shall include quarterly reports that concern the payment to said DBE's. The forms for reporting shall be mailed to the primes office and will request specific information on all payments, such as photocopies of both sides of the checks, made to DBE firms contracted for goals. The cancelled checks will be cross-matched against the General Contractor's Certification of Payment form, (CN-91), to verify payments. Should a discrepancy develop in ascertaining payment or amounts paid, DelDOT's DBE Office shall enlist the aid of the DelDOT internal audit department to audit the primes financial records to ascertain payments made to DBE's. Regular on-site visits will be made by the DBE Office personnel to verify the DBE's work performance. At all times throughout the bidding process and performance of the contract, the Contractor/Consultant has the affirmative obligation of demonstrating to the Department that the Contractor/Consultant is in compliance with regulations. As an indication of such compliance, the Prime shall make its records available to the Department, provide whatever documents may be required by the Department, and shall cooperate fully in Department compliance reviews. Should shortcomings be identified, the Department will initiate conciliation. If conciliation fails, sanctions may be proposed as provided in Section 3 Non-Compliance 1(a) & (b). The FHWA will be advised when conciliation begins.
- C. Non-Performance – When a DBE subcontractor is unable to perform successfully, the prime contractor shall attempt to substitute another DBE as follows:
1. Notify in writing the District Construction Engineer or Project Manager and the DBE Program Manager as soon as possible if problems with a DBE subcontractor occur on a project, indicating the circumstances that caused the problem, and attempts made to resolve the situation.
 2. Solicit bids from other DBEs for whatever portion of the subcontract remains to be completed.
 3. When a substitute DBE is found, furnish the Department with a copy of the new subcontract agreement for approval by the DBE Program office.
 4. No substitute DBE subcontractor may begin work until approved in writing by the Department.
 5. In the event that a substitute DBE subcontractor cannot be found, the prime may be asked to submit evidence that a Good Faith Effort has been made to substitute a DBE subcontractor for the item(s) of work.
 6. In the event of a situation that requires immediate action, the Department may waive the procedures listed in this section. A subcontractor shall perform no work until DelDOT has granted written approval.
- D. Non-Compliance
1. If an investigation by the Department uncovers any willful non-compliance by a prime or DBE subcontractor as it applies to the requirements of this program, during the

performance of the contract, the Department will initiate conciliation, and upon failure of conciliation, sanctions as set out below may be imposed:

a. Sanctions against DBE:

The Department will notify the DBE of the sanctions to be imposed, which may include suspension, decertification or debarment. The sanction notice will inform the DBE that it may notify the Department within fifteen (15) days to request a hearing to show cause why the determination was incorrect. If no request is made within fifteen (15) days, the penalty becomes final. If a hearing is requested, the penalty does not become final until the Department renders its decision. The Department's decision will set forth the reasons relied upon in making the decision to the U.S. Department of Transportation.

b. Sanctions Against Prime Contractor/Consultant:

Prime Contractors and Consultants are advised that failure to meet the contract DBE goals due to circumstances within the control of the Prime Contractor or Consultant will subject them to sanctions which may include financial assessments, probation, suspension, disqualification, debarment, and criminal prosecution, or a combination thereof. Circumstances are within the control of the Prime Contractor or Consultant when the failure to meet the DBE goals is intentional or willful on the part of the Prime Contractor or Consultant and not for reasons such as: elimination of contract items, reduction in quantities by DelDOT, abandonment of the work by the DBE firm, etc. which are beyond the control of the Prime Contractor or Consultant.

A financial assessment will be made in the event that a Prime Contractor or Consultant fails to meet the stated DBE goals on a contract due to circumstances within his or her control. The financial assessment will be equal to the value of the work that would have otherwise been performed by the DBE but for the willful violation of the contract by the Prime Contractor or Consultant by preventing the DBE in any manner from performing said work that the DBE would otherwise have done to achieve the DBE goal. The Department shall use the financial assessment, as it deems necessary for the furtherance of the DBE program. The Prime Contractor or Consultant may also be required to reimburse the DBE for lost work or lost work opportunities.

In addition to the financial assessment, any willful violation of the DBE Program shall be subject to the following actions:

1. Withholding progress payments
2. Cancellation of the contract
3. Removal of the Prime Contractor or Consultant from the pre-qualified list for a specified period of time
4. Suspension and debarment of the Prime Contractor or Consultant for egregious or repeated violations of the DBE regulations, falsifications, or misrepresentations
5. referral for criminal prosecution

We will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109. We also will consider similar action under our own legal authorities, including responsibility determinations in future contracts.

V. GOALS

Overall Goals (26.45)

A. OVERALL DBE PARTICIPATION GOALS – PROCESS

1. DelDOT will use the following process each year to determine its overall goals:
 - a. In April, the DBE Program Office will consult with minority, women's, and contractor groups, community organizations, and other organizations or officials to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and DelDOT's efforts to establish a level playing field for the participation of DBEs. Concerns and comments will be considered in developing the goals.
 - b. On or about June 1, DelDOT will publish a notice in a major Delaware newspaper, minority-focused media (where possible), and the DelDOT website advising the public of the proposed overall goal. The rationale for goal development is available for inspection during normal business hours in the DBE Program Office, Delaware Department of Transportation, 800 Bay Road, Dover, DE 19901 for 30 calendar days following its publication. Comments regarding the proposed overall goal will be received for 45 calendar days from the date of publication at the above address.
 - c. DelDOT submits proposed goals and a summary of public comments to U.S. DOT by August 1 of each year. Included with the goals are descriptions of the methodologies used, the base figures, and the evidence relies on for adjustments.
 - d. Unless otherwise directed by FHWA or FTA, the new goals take effect on October 1 each year. The goals provide for participation by all certified DBEs and are not subdivided into group-specific goals.
2. DelDOT uses the requirements of 49 CFR Part 26.45 to develop and establish the annual goals and to determine percentages of race-neutral and race-conscious participation [See Attachment I].
3. DelDOT will adjust the estimated breakout of race-neutral and race-conscious participation to reflect actual DBE participation and will track and report race-neutral and race-conscious participation separately. (Note: DTC will be responsible for

tracking and reporting DBE participation in FTA funded programs.) For reporting purposes, race-neutral DBE participation includes, but is not limited to:

- a. DBE participation through a prime contract that a DBE obtains through customary competitive procurement procedures
- b. DBE participation through a subcontract on a prime contract that does not have a DBE goal
- c. DBE participation through a subcontract to a prime contract that exceeds a contract goal

Contract Goals (26.51)

DelDOT will use contract goals on both construction projects and professional services projects to meet any portion of the overall goal DelDOT does not project being able to meet using race-neutral means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of our overall goal that is not projected to be met through the use of race-neutral means.

DelDOT will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. We need not establish a contract goal on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work).

DelDOT will express our contract goals as a percentage of the total amount of a DOT-assisted contract.

Good Faith Efforts (26.53)

Information to be Submitted

DelDOT treats bidder/offers' compliance with good faith efforts requirements as a matter of responsibility.

Each solicitation for which a contract goal has been established will require the bidders/offers to submit the following information as a matter of responsibility.

- 1. The names and addresses of DBE firms that will participate in the contract;
- 2. A description of the work that each DBE will perform;
- 3. The dollar amount of the participation of each DBE firm participation.
- 4. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal within 10 days of notification by DelDOT

5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
6. If the contract goal will not be met, evidence of good faith efforts shall be supplied with the bid package or with the Expression of Interest for consultant projects.

Demonstration of Good Faith Efforts

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts.

The following personnel are responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive: the DBE Program Manager and the Contract Services Administrator for DelDOT for FHWA assisted projects or the DTC DBE Liaison Officer and the Contract Administration Supervisor for DTC.

DelDOT will ensure that all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before we commit to the performance of the contract by the bidder/offeror.

Requirements For Good Faith Effort

When the DBE Goals established for a contract by DelDOT are not met, the contractor/consultant shall demonstrate good faith efforts to meet the DBE contract goals. The contractor/consultant shall demonstrate that the efforts made were those that a contractor/consultant actively and aggressively seeking to meet the goals established by DelDOT would make, given all relevant circumstances. Evidence of this good faith effort will be submitted with the bid at the time of the bid opening or with the Expression of Interest as it relates to the consultant process.

The contractor/consultant is expected to demonstrate good faith efforts by actively and aggressively seeking out DBE participation in the project to the maximum extent, given all relevant circumstances. Following are the kinds of efforts that may be taken, but are not deemed to be exclusive or exhaustive, and DelDOT will consider other factors and types of efforts that may be relevant:

1. Efforts made to select portions of work proposed to be performed by DBEs in order to increase the likelihood of achieving the stated goal. Selection of portions of work are required to at least equal the goal for DBE utilization specified in this contract.
2. Written notification to DBE firms at least ten (10) calendar days prior to the opening of a bid soliciting DBE interest in participating in the contract as a subcontractor or supplier and for specific items of work.
3. Efforts made to obtain and negotiate with DBE firms for specific items of work:

- a. Description of the means by which firms were solicited (i.e., by telephone, e-mail, written notice, advertisement).
 - b. The names, addresses, telephone numbers of DBE's contacted; the dates of initial contact; and whether initial solicitations of interest were followed-up by contacting the DBEs to determine with certainty whether the DBEs were interested.
 - c. A description of the information provided to DBE firms regarding the plans specifications and estimated quantities for portions of the work to be performed.
 - d. A statement of why additional agreements with DBEs were not reached in order to meet the project goal.
 - e. Listing of each DBE contacted but not contracted and the reasons for not entering a contract.
4. Efforts made to assist DBEs that need assistance in obtaining bonding, insurance, or lines of credit required by the contractor.
 5. Reasons why certified DBEs are not available or not interested.
 6. Efforts to effectively use the services of available disadvantaged community organizations, disadvantaged contractor's groups, local, state, and federal DBE assistance offices, and other organizations that provide assistance in recruitment and placement of DBEs.

The following are examples of actions that may not be used as justification by the contractor for failure to meet DBE contract goals:

1. Failure to contract with a DBE solely because the DBE was unable to provide performance and/or payment bonds.
2. Rejection of a DBE bid or quotation based on price alone.
3. Rejection of a DBE because of its union or non-union status.
4. Failure to contract with a DBE because the contractor normally would perform all or most of the work in the contract.

Administrative Reconsideration

Within 5 (five) days of being informed by DelDOT that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official: a. for FHWA assisted projects - Director, Division of Technology and Support Services, DelDOT, P.O. Box 778, Dover, Delaware 19903; or b. for FTA assisted projects – Chief Financial Officer, DTC , 400 S. Madison Street, Wilmington, Delaware 19801. The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate

good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with our reconsideration official, explaining the basis for finding that the bidder/offeror did or did not meet the goal or make adequate good faith efforts to do so. The final decision made by the reconsideration official will be communicated to the offer/bidder in writing. The result of the reconsideration process is not administratively appealable to the U.S. Department of Transportation.

Good Faith Efforts When a DBE is Replaced on a Contract

DelDOT will require a contractor/consultant to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. The prime contractor/prime consultant will be required to notify the DBE Program Manager for FHWA assisted projects or the DTC DBE Liaison Officer for FTA assisted projects immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation supporting this situation.

In this situation, the prime will be required to obtain DelDOT's prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts requirements as outlined in this section and as outlined in subsection A.6 of the Monitoring and Enforcement section of this plan.

Counting DBE Participation (26.55)

We will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55 as modified by the Final Rule dated June 16, 2003.

VI. CERTIFICATION (26.61 – 26.91)

DelDOT uses the certification standards of Subpart D of part 26 and the certification procedures of Subpart E of part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. Both Subpart D and E can be found in Attachment A. We will make our certification decisions based on the facts as a whole.

Process

Delaware uses the standard Uniform Certification Application Form and the Affidavit of Certification (Appendix F to Part 26 in its entirety).

For information about the certification process or to apply for certification, firms should contact: DelDOT, DBE Office, P.O. Box 778, Dover, DE 19903, (302) 760-2035 or e-mail: richard.rexrode@state.de.us

If DelDOT denies a firm's application or decertifies a firm, the firm may not reapply for certification until twelve (12) months have passed from the date of the final decision.

Certification Renewal

For firms that we have certified or reviewed and found eligible under part 26, we will again review each certified firm's eligibility every 3 (three) years. These reviews will include the following components: a new application; last 3-years tax returns, statements of personal net worth, and, if warranted on-site review or home state certification. An on-site review or home state certification may be required when significant changes to corporate structure, the primary objective of the business or a definitive expansion of the business and/or any other notable differences to the original DBE certification application are realized.

Unified Certification Program

The State of Delaware is unique in that most state agencies use DelDOT's directory of certified DBE firms to meet their individual requirements. In the State of Delaware, recipients of FHWA, FTA, and FAA funds use the Unified Directory of certified DBE firms to meet their individual DOT-assisted requirements and agree to follow the requirements in Section 26.81.

Decertification and Appeals

In the event we propose to remove a DBE's certification, we will follow procedures consistent with 26.87.

A certified DBE may be decertified for any of the following reasons:

1. The business has changed to the extent that it is no longer owned or controlled by the disadvantaged person (s).
2. The DBE does not submit information as required for recertification or does not respond to the request for recertification.
3. The DBE is no longer an on-going business entity.
4. The DBE has been decertified as a Section 8 (a) by the U.S. Small Business Administration and has not been otherwise certified by DelDOT. Please note, all 8 (a) firms must annually establish that their firm remains 8(a) qualified.
5. The DBE was decertified as an 8(a) firm by the U.S. Small Business Administration, the firm may apply for DelDOT certification but will be considered a decertified firm until it meets DelDOT Program Certification requirements.
6. DBE falsifies a sworn statement.
7. DBE violates the DBE Program or 49 CFR Part 26.
8. DBE fails to notify the DBE Office, within thirty (30) days of change in the ownership, control management, independence, address or location change or status as an on-going concern.
9. DBE (s) recertification review determines the firm no longer meets eligibility standards.

The DBE Program Manager, should one of the above situations arise, will perform an investigation of the facts surrounding the issue and make a determination. If the investigation is deemed to have merit and there exists enough factual support for decertification of the firm, the DBE Program

Manager will notify the firm in writing, setting forth the reasons and specific findings upon which the conclusions for the action is based. The DBE shall notify the DBE Office within fifteen (15) calendar days of such notification that he/she wishes to have a hearing before DelDOT's Hearing Officer.

Once the Department is notified of an appeal the Department's Hearing Officer will schedule an informal hearing, to be recorded by a court reporter, or allow the firm the opportunity to present their arguments in writing. Upon completion of this process the Hearing Officer will communicate the determination in writing to both the appealing firm and the DBE Program Manager. The Department's Hearing Officer will be an individual appointed from a separate division within the department who is not in direct contact with the operation of the DBE Program. During the pendency of the decision the DBE will remain eligible to participate as a DBE. Once DelDOT has made its final decision on certification, that determination goes into effect immediately.

If DelDOT denies a firm's application or decertifies a firm, the firm may not reapply for certification until twelve (12) months have passed from the date of the final decision. Any firm, which believes that it has been wrongly denied certification as a DBE with DelDOT may file an appeal to U.S. DOT no later than 90 days after the date of denial of certification. Such appeals may be sent to:

Department of Transportation
Office of Civil Rights Certification Appeals
Branch 400 7th St. SW, Room 5414
Washington, DC 20590

During the appeal process, the firm shall remain ineligible for consideration as a disadvantaged business with respect to DelDOT's DBE Program until and unless the U.S. DOT finds that the firm is eligible as outlined in 49 CFR Part 26.

At all stages of the certification or decertification process, the prospective DBE shall have the affirmative burden of proving that it is a qualified DBE.

We will promptly implement any DOT certification appeal decisions affecting the eligibility of DBEs for our DOT-assisted contracting (e.g., certify a firm if DOT has determined that our denial of its application was erroneous).

"No Change" affidavits and Notices of Change

We require all DBEs to inform us, in a written affidavit, of any change in its circumstances affecting its ability to meet size, disadvantaged status, ownership or control criteria of 49 CFR Part 26 or of any material changes in the information provided with DelDOT's application for certification.

We also require all owners of all certified DBEs to submit, on the anniversary date of their certification, a "no change" affidavit meeting the requirements of 26.83(j). The text of this affidavit is the following:

“I swear (or affirm) that there have been no changes in the circumstances of *[name of DBE firm]* affecting its ability to meet the size, disadvantaged status, ownership, or control requirements of 49 CFR part 26. There have been no material changes in the information provided with *[name of DBE]*’s application for certification, except for any previous changes provided in writing as notice to the DelDOT under 26.83 (I). *[Name of firm]* meets Small Business Administration (SBE) criteria for being a small business concern and its average annual gross receipts (as defined by SBA rules) over the firm’s previous three fiscal years do not exceed \$19.57 million.”

We require DBEs to submit with this affidavit documentation of the firm’s size and gross receipts.

We will notify all currently certified DBE firms of these obligations when the firm is reviewed the first time under these new regulations. This notification will inform DBEs that to submit the “no change” affidavit, their owners must swear or affirm that they meet all regulatory requirements of part 26, including personal net worth. Likewise, if a firm’s owner knows or should know that he or she, or the firm, fails to meet a part 26 eligibility requirements, the obligation to submit a notice of change applies.

Personal Net Worth

We will require all disadvantaged owners of new applicants and of currently certified DBEs whose eligibility under part 26 we review, to submit a statement of personal net worth. New applicants will submit with application. Currently certified firms shall submit during the review process.

Attachment G sets forth our Personal Net Worth form and the documentation respondents must submit with it.

VII. REPORTING

Information Collection and Reporting

Bidders List

DelDOT obtains through a Bidder Registration Form (Attachment H) and maintains a Bidders List of all successful and unsuccessful prime and subcontractors bidding on U.S. DOT-assisted contracts. It contains the following information:

1. Firm Name
2. Firm Address
3. Firm's Status as a DBE or Non-DBE
4. Age of the Firm
5. Annual Gross Receipts of the Firm

Monitoring Payments to DBEs

III. The DBE Office for FHWA assisted projects will:

1. Maintain records showing awards to DBEs. These awards shall be measured against projected DBE awards and/or DBE goals. The Department shall obtain regular quarterly reports from prime contractors on their progress in meeting contractual DBE obligations.
These reports will show the DBE firms value of work for that quarter.
2. Require prime contractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the DelDOT or DOT. This reporting requirement also extends to any certified DBE subcontractor.
3. Keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.
4. Perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation.

IV. The DTC DBE Office for FTA assisted projects will:

1. The DTC will require prime contractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. An authorized representative of the DTC or FTA will make these records available for inspection upon request. This reporting requirement also extends to any certified DBE subcontractor.
2. The DTC will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.
3. The DTC will perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation.

Reporting to DOT

DBE participation will be submitted to U.S. DOT as required. DelDOT will use the required form for reporting DBE participation.

VIII. Confidentiality

DelDOT will safeguard from disclosure to third parties, information that may reasonably be regarded as confidential business information, consistent with Federal, State and Local law. Notwithstanding any contrary provisions of state or local law, DelDOT will not release personal

financial information submitted in response to the personal net worth requirement to a third party (other than U.S. DOT) without the written consent of the submitter.

Applicants should indicate on documents submitted for the certification process whether they are confidential business documents.

IX. ATTACHMENTS

- A. 49 Code of Federal Regulations (CFR) Part 26
- B. Organizational Chart.
- C. Unified Directory of Certified DBE Firms
- D. Mentor-Protégé Program
- E. Title 17, Delaware Code, Chapter 8
- F. Certification Application
- G. Personal Net Worth
- H. Race Neutral Project Tracking
- I. The Delaware Department of Transportation's Annual Overall Goal Methodology

J.

Attachment A

49 Code of Federal Regulations (CFR) Part 2



THIS DATA CURRENT AS OF THE FEDERAL REGISTER DATED JANUARY 29, 2004

**49 CFR Part 26
Transportation
Subtitle A
Office of the Secretary of Transportation**

**PART 26 -- PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN
DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS**

Subpart A -- General

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Appendix F to Part 26 -- Uniform Certification Application Form

Authority: 23 U.S.C. 324; 42 U.S.C. 2000d, *et seq.*; 49 U.S.C 1615, 47107, 47113, 47123; Sec. 1101(b), Pub. L. 105-178, 112 Stat. 107, 113.

Source: 64 FR 5126, Feb. 2, 1999, unless otherwise noted.

Subpart A -- General

§26.1 What are the objectives of this part?

This part seeks to achieve several objectives:

- (a) To ensure nondiscrimination in the award and administration of DOT-assisted contracts in the Department's highway, transit, and airport financial assistance programs;
- (b) To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
- (c) To ensure that the Department's DBE program is narrowly tailored in accordance with applicable law;
- (d) To ensure that only firms that fully meet this part's eligibility standards are permitted to participate as DBEs;
- (e) To help remove barriers to the participation of DBEs in DOT-assisted contracts;
- (f) To assist the development of firms that can compete successfully in the marketplace outside the DBE program; and
- (g) To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

§26.3 To whom does this part apply?

- (a) If you are a recipient of any of the following types of funds, this part applies to you:
 - (1) Federal-aid highway funds authorized under Titles I (other than Part B) and V of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102-240, 105 Stat. 1914, or Titles I, III, and V of the Transportation Equity Act for the 21st Century (TEA-21), Pub. L. 105-178, 112 Stat. 107.
 - (2) Federal transit funds authorized by Titles I, III, V and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, III, and V of the TEA-21, Pub. L. 105-178.
 - (3) Airport funds authorized by 49 U.S.C. 47101, *et seq.*
- (b) [Reserved]

(c) If you are letting a contract, and that contract is to be performed entirely outside the United States, its territories and possessions, Puerto Rico, Guam, or the Northern Marianas Islands, this part does not apply to the contract.

(d) If you are letting a contract in which DOT financial assistance does not participate, this part does not apply to the contract.

26.5 What do the terms used in this part mean?

Affiliation has the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR part 121.

(1) Except as otherwise provided in 13 CFR part 121, concerns are affiliates of each other when, either directly or indirectly:

(i) One concern controls or has the power to control the other; or

(ii) A third party or parties controls or has the power to control both; or

(iii) An identity of interest between or among parties exists such that affiliation may be found.

(2) In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the DBE program.

Alaska Native means a citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut blood, or a combination of those bloodlines. The term includes, in the absence of proof of a minimum blood quantum, any citizen whom a Native village or Native group regards as an Alaska Native if their father or mother is regarded as an Alaska Native.

Alaska Native Corporation (ANC) means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, *et seq.*).

Compliance means that a recipient has correctly implemented the requirements of this part.

Contract means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them. For purposes of this part, a lease is considered to be a contract.

Contractor means one who participates, through a contract or subcontract (at any tier), in a DOT-assisted highway, transit, or airport program.

Department or *DOT* means the U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).

Disadvantaged business enterprise or *DBE* means a for-profit small business concern --

(1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and

(2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

DOT-assisted contract means any contract between a recipient and a contractor (at any tier) funded in whole or in part with DOT financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land.

DOT/SBA Memorandum of Understanding or MOU, refers to the agreement signed on November 23, 1999, between the Department of Transportation (DOT) and the Small Business Administration (SBA) streamlining certification procedures for participation in

SBA's 8(a) Business Development (8(a) BD) and Small Disadvantaged Business (SDB) programs, and DOT's Disadvantaged Business Enterprise (DBE) program for small and disadvantaged businesses.

Good faith efforts means efforts to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

Immediate family member means father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, or father-in-law.

Indian tribe means any Indian tribe, band, nation, or other organized group or community of Indians, including any ANC, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or is recognized as such by the State in which the tribe, band, nation, group, or community resides. See definition of "tribally-owned concern" in this section.

Joint venture means an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

Native Hawaiian means any individual whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii.

Native Hawaiian Organization means any community service organization serving Native Hawaiians in the State of Hawaii which is a not-for-profit organization chartered by the State of Hawaii, is controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.

Noncompliance means that a recipient has not correctly implemented the requirements of this part.

Operating Administration or *OA* means any of the following parts of DOT: the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and Federal Transit Administration (FTA). The "Administrator" of an operating administration includes his or her designees.

Personal net worth means the net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth does not include: The individual's ownership interest in an applicant or participating DBE firm; or the individual's equity in his or her primary place of residence. An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse.

Primary industry classification means the North American Industrial Classification System (NAICS) designation which best describes the primary business of a firm. The NAICS is described in the *North American Industry Classification Manual -- United States, 1997* which is available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA, 22161; by calling 1 (800) 553-6847; or via the Internet at: <http://www.ntis.gov/product/naics.htm>.

Primary recipient means a recipient which receives DOT financial assistance and passes some or all of it on to another recipient.

Principal place of business means the business location where the individuals who manage the firm's day-to-day operations spend most working hours and where top management's business records are kept. If the offices from which management is directed and where business records are kept are in different locations, the recipient will determine the principal place of business for DBE program purposes.

Program means any undertaking on a recipient's part to use DOT financial assistance, authorized by the laws to which this part applies.

Race-conscious measure or program is one that is focused specifically on assisting only DBEs, including women-owned DBEs.

Race-neutral measure or program is one that is, or can be, used to assist all small businesses. For the purposes of this part, *race-neutral* includes gender-neutrality.

Recipient is any entity, public or private, to which DOT financial assistance is extended, whether directly or through another recipient, through the programs of the FAA, FHWA, or FTA, or who has applied for such assistance.

Secretary means the Secretary of Transportation or his/her designee.

Set-aside means a contracting practice restricting eligibility for the competitive award of a contract solely to DBE firms.

Small Business Administration or *SBA* means the United States Small Business Administration.

SBA certified firm refers to firms that have a current, valid certification from or recognized by the SBA under the 8(a) BD or SDB programs.

Small business concern means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in §26.65(b).

Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is --

(1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis.

(2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

- (i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
- (ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
- (iii) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
- (iv) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
- (v) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
- (vi) Women;
- (vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

Tribally-owned concern means any concern at least 51 percent owned by an Indian tribe as defined in this section.

You refers to a recipient, unless a statement in the text of this part or the context requires otherwise (i.e., ' You must do XYZ' means that recipients must do XYZ).

[64 FR 5126, Feb. 2, 1999, as amended at 64 FR 34570, June 28, 1999; 68 FR 35553, June 16, 2003]

§26.7 What discriminatory actions are forbidden?

(a) You must never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by this part on the basis of race, color, sex, or national origin.

(b) In administering your DBE program, you must not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, sex, or national origin.

§26.9 How does the Department issue guidance and interpretations under this part?

(a) This part applies instead of subparts A and C through E of 49 CFR part 23 in effect prior to March 4, 1999. (See 49 CFR Parts 1 to 99, revised as of October 1, 1998.) Only guidance and interpretations (including interpretations set forth in certification appeal decisions) consistent with this part 26 and issued after March 4, 1999 have definitive, binding effect in implementing the provisions of this part and constitute the official position of the Department of Transportation.

(b) The Secretary of Transportation, Office of the Secretary of Transportation, FHWA, FTA, and FAA may issue written interpretations of or written guidance concerning this part. Written interpretations and guidance are valid and binding, and constitute the official position of the Department of Transportation, only if they are issued over the signature of the Secretary of Transportation or if they contain the following statement:

The General Counsel of the Department of Transportation has reviewed this document and approved it as consistent with the language and intent of 49 CFR part 26.

§26.11 What records do recipients keep and report?

(a) [Reserved]

(b) You must continue to provide data about your DBE program to the Department as directed by DOT operating administrations.

(c) You must create and maintain a bidders list.

(1) The purpose of this list is to provide you as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on your Federally-assisted contracts for use in helping you set your overall goals.

(2) You must obtain the following information about DBE and non-DBE contractors and subcontractors who seek to work on your Federally-assisted contracts:

(i) Firm name;

(ii) Firm address;

(iii) Firm's status as a DBE or non-DBE;

(iv) Age of the firm; and

(v) The annual gross receipts of the firm. You may obtain this information by asking each firm to indicate into what gross receipts bracket they fit (*e.g.*, less than \$500,000; \$500,000-\$1 million; \$1-2 million; \$2-5 million; *etc.*) rather than requesting an exact figure from the firm.

(3) You may acquire the information for your bidders list in a variety of ways. For example, you can collect the data from all bidders, before or after the bid due date. You can conduct a survey that will result in statistically sound estimate of the universe of DBE and non-DBE contractors and subcontractors who seek to work on your Federally-assisted contracts. You may combine different data collection approaches (*e.g.*, collect name and address information from all bidders, while conducting a survey with respect to age and gross receipts information).

[64 FR 5126, Feb. 2, 1999, as amended at 65 FR 68951, Nov. 15, 2000]

§26.13 What assurances must recipients and contractors make?

(a) Each financial assistance agreement you sign with a DOT operating administration (or a primary recipient) must include the following assurance:

The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR part 26. The recipient shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The recipient's DBE program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*).

(b) Each contract you sign with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

§26.15 How can recipients apply for exemptions or waivers?

(a) You can apply for an exemption from any provision of this part. To apply, you must request the exemption in writing from the Office of the Secretary of Transportation, FHWA, FTA, or FAA. The Secretary will grant the request only if it documents special or exceptional circumstances, not likely to be generally applicable, and not contemplated in connection with the rulemaking that established this part, that make your compliance with a specific provision of this part impractical. You must agree to take any steps that the Department specifies to comply with the intent of the provision from which an exemption is granted. The Secretary will issue a written response to all exemption requests.

(b) You can apply for a waiver of any provision of Subpart B or C of this part including, but not limited to, any provisions regarding administrative requirements, overall goals, contract goals or good faith efforts. Program waivers are for the purpose of authorizing

you to operate a DBE program that achieves the objectives of this part by means that may differ from one or more of the requirements of Subpart B or C of this part. To receive a program waiver, you must follow these procedures:

(1) You must apply through the concerned operating administration. The application must include a specific program proposal and address how you will meet the criteria of paragraph (b)(2) of this section. Before submitting your application, you must have had public participation in developing your proposal, including consultation with the DBE community and at least one public hearing. Your application must include a summary of the public participation process and the information gathered through it.

(2) Your application must show that --

(i) There is a reasonable basis to conclude that you could achieve a level of DBE participation consistent with the objectives of this part using different or innovative means other than those that are provided in subpart B or C of this part;

(ii) Conditions in your jurisdiction are appropriate for implementing the proposal;

(iii) Your proposal would prevent discrimination against any individual or group in access to contracting opportunities or other benefits of the program; and

(iv) Your proposal is consistent with applicable law and program requirements of the concerned operating administration's financial assistance program.

(3) The Secretary has the authority to approve your application. If the Secretary grants your application, you may administer your DBE program as provided in your proposal, subject to the following conditions:

(i) DBE eligibility is determined as provided in subparts D and E of this part, and DBE participation is counted as provided in §26.49;

(ii) Your level of DBE participation continues to be consistent with the objectives of this part;

(iii) There is a reasonable limitation on the duration of your modified program; and

(iv) Any other conditions the Secretary makes on the grant of the waiver.

(4) The Secretary may end a program waiver at any time and require you to comply with this part's provisions. The Secretary may also extend the waiver, if he or she determines that all requirements of paragraphs (b)(2) and (3) of this section continue to be met. Any such extension shall be for no longer than period originally set for the duration of the program.

Subpart B -- Administrative Requirements for DBE Programs for Federally-Assisted Contracting

§26.21 Who must have a DBE program?

(a) If you are in one of these categories and let DOT-assisted contracts, you must have a DBE program meeting the requirements of this part:

(1) All FHWA recipients receiving funds authorized by a statute to which this part applies;

(2) FTA recipients receiving planning, capital and/or operating assistance who will award prime contracts (excluding transit vehicle purchases) exceeding \$250,000 in FTA funds in a Federal fiscal year;

(3) FAA recipients receiving grants for airport planning or development who will award prime contracts exceeding \$250,000 in FAA funds in a Federal fiscal year.

(b)(1) You must submit a DBE program conforming to this part by August 31, 1999 to the concerned operating administration (OA). Once the OA has approved your program, the approval counts for all of your DOT-assisted programs (except that goals are reviewed by the particular operating administration that provides funding for your DOT-assisted contracts).

(2) You do not have to submit regular updates of your DBE programs, as long as you remain in compliance. However, you must submit significant changes in the program for approval.

(c) You are not eligible to receive DOT financial assistance unless DOT has approved your DBE program and you are in compliance with it and this part. You must continue to carry out your program until all funds from DOT financial assistance have been expended.

[64 FR 5126, Feb. 2, 1999, as amended at 64 FR 34570, June 28, 1999; 65 FR 68951, Nov. 15, 2000]

§26.23 What is the requirement for a policy statement?

You must issue a signed and dated policy statement that expresses your commitment to your DBE program, states its objectives, and outlines responsibilities for its implementation. You must circulate the statement throughout your organization and to the DBE and non-DBE business communities that perform work on your DOT-assisted contracts.

§26.25 What is the requirement for a liaison officer?

You must have a DBE liaison officer, who shall have direct, independent access to your Chief Executive Officer concerning DBE program matters. The liaison officer shall be responsible for implementing all aspects of your DBE program. You must also have adequate staff to administer the program in compliance with this part.

26.27 What efforts must recipients make concerning DBE financial institutions?

You must thoroughly investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in your community and make reasonable efforts to use these institutions. You must also encourage prime contractors to use such institutions.

§26.29 What prompt payment mechanisms must recipients have?

(a) You must establish, as part of your DBE program, a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment you make to the prime contractor.

(b) You must ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. You must use one of the following methods to comply with this requirement:

(1) You may decline to hold retainage from prime contractors and prohibit prime contractors from holding retainage from subcontractors.

(2) You may decline to hold retainage from prime contractors and require a contract clause obligating prime contractors to make prompt and full payment of any retainage kept by prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed.

(3) You may hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after your payment to the prime contractor.

(c) For purposes of this section, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the recipient. When a recipient has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

(d) Your DBE program must provide appropriate means to enforce the requirements of this section. These means may include appropriate penalties for failure to comply, the terms and conditions of which you set. Your program may also provide that any delay or

postponement of payment among the parties may take place only for good cause, with your prior written approval.

(e) You may also establish, as part of your DBE program, any of the following additional mechanisms to ensure prompt payment:

(1) A contract clause that requires prime contractors to include in their subcontracts language providing that prime contractors and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes. You may specify the nature of such mechanisms.

(2) A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

(3) Other mechanisms, consistent with this part and applicable state and local law, to ensure that DBEs and other contractors are fully and promptly paid.

[68 FR 35553, June 16, 2003]

§26.31 What requirements pertain to the DBE directory?

You must maintain and make available to interested persons a directory identifying all firms eligible to participate as DBEs in your program. In the listing for each firm, you must include its address, phone number, and the types of work the firm has been certified to perform as a DBE. You must revise your directory at least annually and make updated information available to contractors and the public on request.

§26.33 What steps must a recipient take to address overconcentration of DBEs in certain types of work?

(a) If you determine that DBE firms are so overconcentrated in a certain type of work as to unduly burden the opportunity of non-DBE firms to participate in this type of work, you must devise appropriate measures to address this overconcentration.

(b) These measures may include the use of incentives, technical assistance, business development programs, mentor-protégé programs, and other appropriate measures designed to assist DBEs in performing work outside of the specific field in which you have determined that non-DBEs are unduly burdened. You may also consider varying your use of contract goals, to the extent consistent with §26.51, to ensure that non-DBEs are not unfairly prevented from competing for subcontracts.

(c) You must obtain the approval of the concerned DOT operating administration for your determination of overconcentration and the measures you devise to address it. Once approved, the measures become part of your DBE program.

§26.35 What role do business development and mentor-protégé programs have in the DBE program?

(a) You may or, if an operating administration directs you to, you must establish a DBE business development program (BDP) to assist firms in gaining the ability to compete successfully in the marketplace outside the DBE program. You may require a DBE firm, as a condition of receiving assistance through the BDP, to agree to terminate its participation in the DBE program after a certain time has passed or certain objectives have been reached. See Appendix C of this part for guidance on administering BDP programs.

(b) As part of a BDP or separately, you may establish a "mentor-protégé" program, in which another DBE or non-DBE firm is the principal source of business development assistance to a DBE firm.

(1) Only firms you have certified as DBEs before they are proposed for participation in a mentor-protégé program are eligible to participate in the mentor-protégé program.

(2) During the course of the mentor-protégé relationship, you must:

(i) Not award DBE credit to a non-DBE mentor firm for using its own protégé firm for more than one half of its goal on any contract let by the recipient; and

(ii) Not award DBE credit to a non-DBE mentor firm for using its own protégé firm for more than every other contract performed by the protégé firm.

(3) For purposes of making determinations of business size under this part, you must not treat protégé firms as affiliates of mentor firms, when both firms are participating under an approved mentor-protégé program. See Appendix D of this part for guidance concerning the operation of mentor-protégé programs.

(c) Your BDPs and mentor-protégé programs must be approved by the concerned operating administration before you implement them. Once approved, they become part of your DBE program.

§26.37 What are a recipient's responsibilities for monitoring the performance of other program participants?

(a) You must implement appropriate mechanisms to ensure compliance with the part's requirements by all program participants (e.g., applying legal and contract remedies available under Federal, state and local law). You must set forth these mechanisms in your DBE program.

(b) Your DBE program must also include a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award is actually performed by DBEs.

(c) This mechanism must provide for a running tally of actual DBE attainments (*e.g.*, payments actually made to DBE firms), including a means of comparing these attainments to commitments. In your reports of DBE participation to the Department, you must display both commitments and attainments.

[64 FR 5126, Feb. 2, 1999, as amended at 65 FR 68951, Nov. 15, 2000; 68 FR 35554, June 16, 2003]

Subpart C -- Goals, Good Faith Efforts, and Counting

§26.41 What is the role of the statutory 10 percent goal in this program?

- (a) The statutes authorizing this program provide that, except to the extent the Secretary determines otherwise, not less than 10 percent of the authorized funds are to be expended with DBEs.
- (b) This 10 percent goal is an aspirational goal at the national level, which the Department uses as a tool in evaluating and monitoring DBEs' opportunities to participate in DOT-assisted contracts.
- (c) The national 10 percent goal does not authorize or require recipients to set overall or contract goals at the 10 percent level, or any other particular level, or to take any special administrative steps if their goals are above or below 10 percent.

§26.43 Can recipients use set-asides or quotas as part of this program?

- (a) You are not permitted to use quotas for DBEs on DOT-assisted contracts subject to this part.
- (b) You may not set-aside contracts for DBEs on DOT-assisted contracts subject to this part, except that, in limited and extreme circumstances, you may use set-asides when no other method could be reasonably expected to redress egregious instances of discrimination.

§26.45 How do recipients set overall goals?

- (a)(1) Except as provided in paragraph (a)(2) of this section, you must set an overall goal for DBE participation in your DOT-assisted contracts.
- (2) If you are a FTA or FAA recipient who reasonably anticipates awarding (excluding transit vehicle purchases) \$250,000 or less in FTA or FAA funds in prime contracts in a Federal fiscal year, you are not required to develop overall goals for FTA or FAA respectively for that fiscal year. However, if you have an existing DBE program, it must remain in effect and you must seek to fulfill the objectives outlined in §26.1.

(b) Your overall goal must be based on demonstrable evidence of the availability of ready, willing and able DBEs relative to all businesses ready, willing and able to participate on your DOT-assisted contracts (hereafter, the "relative availability of DBEs"). The goal must reflect your determination of the level of DBE participation you would expect absent the effects of discrimination. You cannot simply rely on either the 10 percent national goal, your previous overall goal or past DBE participation rates in your program without reference to the relative availability of DBEs in your market.

(c) *Step 1.* You must begin your goal setting process by determining a base figure for the relative availability of DBEs. The following are examples of approaches that you may take toward determining a base figure. These examples are provided as a starting point for your goal setting process. Any percentage figure derived from one of these examples should be considered a basis from which you begin when examining all evidence available in your jurisdiction. These examples are not intended as an exhaustive list. Other methods or combinations of methods to determine a base figure may be used, subject to approval by the concerned operating administration.

(1) *Use DBE Directories and Census Bureau Data.* Determine the number of ready, willing and able DBEs in your market from your DBE directory. Using the Census Bureau's County Business Pattern (CBP) data base, determine the number of all ready, willing and able businesses available in your market that perform work in the same NAICS codes. (Information about the CBP data base may be obtained from the Census Bureau at their web site, www.census.gov/epcd/cbp/view/cbpview.html.) Divide the number of DBEs by the number of all businesses to derive a base figure for the relative availability of DBEs in your market.

(2) *Use a bidders list.* Determine the number of DBEs that have bid or quoted on your DOT-assisted prime contracts or subcontracts in the previous year. Determine the number of all businesses that have bid or quoted on prime or subcontracts in the same time period. Divide the number of DBE bidders and quoters by the number for all businesses to derive a base figure for the relative availability of DBEs in your market.

(3) *Use data from a disparity study.* Use a percentage figure derived from data in a valid, applicable disparity study.

(4) *Use the goal of another DOT recipient.* If another DOT recipient in the same, or substantially similar, market has set an overall goal in compliance with this rule, you may use that goal as a base figure for your goal.

(5) *Alternative methods.* You may use other methods to determine a base figure for your overall goal. Any methodology you choose must be based on demonstrable evidence of local market conditions and be designed to ultimately attain a goal that is rationally related to the relative availability of DBEs in your market.

(d) *Step 2.* Once you have calculated a base figure, you must examine all of the evidence available in your jurisdiction to determine what adjustment, if any, is needed to the base figure in order to arrive at your overall goal.

(1) There are many types of evidence that must be considered when adjusting the base figure. These include:

(i) The current capacity of DBEs to perform work in your DOT-assisted contracting program, as measured by the volume of work DBEs have performed in recent years;

(ii) Evidence from disparity studies conducted anywhere within your jurisdiction, to the extent it is not already accounted for in your base figure; and

(iii) If your base figure is the goal of another recipient, you must adjust it for differences in your local market and your contracting program.

(2) If available, you must consider evidence from related fields that affect the opportunities for DBEs to form, grow and compete. These include, but are not limited to:

(i) Statistical disparities in the ability of DBEs to get the financing, bonding and insurance required to participate in your program;

(ii) Data on employment, self-employment, education, training and union apprenticeship programs, to the extent you can relate it to the opportunities for DBEs to perform in your program.

(3) If you attempt to make an adjustment to your base figure to account for the continuing effects of past discrimination (often called the "but for" factor) or the effects of an ongoing DBE program, the adjustment must be based on demonstrable evidence that is logically and directly related to the effect for which the adjustment is sought.

(e) Once you have determined a percentage figure in accordance with paragraphs (c) and (d) of this section, you should express your overall goal as follows:

(1) If you are an FHWA recipient, as a percentage of all Federal-aid highway funds you will expend in FHWA-assisted contracts in the forthcoming fiscal year;

(2) If you are an FTA or FAA recipient, as a percentage of all FTA or FAA funds (exclusive of FTA funds to be used for the purchase of transit vehicles) that you will expend in FTA or FAA-assisted contracts in the forthcoming fiscal year. In appropriate cases, the FTA or FAA Administrator may permit you to express your overall goal as a percentage of funds for a particular grant or project or group of grants and/or projects.

(f)(1) If you set overall goals on a fiscal year basis, you must submit them to the applicable DOT operating administration for review on August 1 of each year, unless the Administrator of the concerned operating administration establishes a different submission date.

(2) If you are an FTA or FAA recipient and set your overall goal on a project or grant basis, you must submit the goal for review at a time determined by the FTA or FAA Administrator.

(3) You must include with your overall goal submission a description of the methodology you used to establish the goal, including your base figure and the evidence with which it was calculated, and the adjustments you made to the base figure and the evidence relied on for the adjustments. You should also include a summary listing of the relevant

available evidence in your jurisdiction and, where applicable, an explanation of why you did not use that evidence to adjust your base figure. You must also include your projection of the portions of the overall goal you expect to meet through race-neutral and race-conscious measures, respectively (see §26.51(c)).

(4) You are not required to obtain prior operating administration concurrence with the your overall goal. However, if the operating administration's review suggests that your overall goal has not been correctly calculated, or that your method for calculating goals is inadequate, the operating administration may, after consulting with you, adjust your overall goal or require that you do so. The adjusted overall goal is binding on you.

(5) If you need additional time to collect data or take other steps to develop an approach to setting overall goals, you may request the approval of the concerned operating administration for an interim goal and/or goal-setting mechanism. Such a mechanism must:

(i) Reflect the relative availability of DBEs in your local market to the maximum extent feasible given the data available to you; and

(ii) Avoid imposing undue burdens on non-DBEs.

(g) In establishing an overall goal, you must provide for public participation. This public participation must include:

(1) Consultation with minority, women's and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and your efforts to establish a level playing field for the participation of DBEs.

(2) A published notice announcing your proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at your principal office for 30 days following the date of the notice, and informing the public that you and the Department will accept comments on the goals for 45 days

from the date of the notice. The notice must include addresses to which comments may be sent, and you must publish it in general circulation media and available minority-focused media and trade association publications.

(h) Your overall goals must provide for participation by all certified DBEs and must not be subdivided into group-specific goals.

[64 FR 5126, Feb. 2, 1999, as amended at 64 FR 34570, June 28, 1999; 65 FR 68951, Nov. 15, 2000; 68 FR 35553, June 16, 2003]

§26.47 Can recipients be penalized for failing to meet overall goals?

(a) You cannot be penalized, or treated by the Department as being in noncompliance with this rule, because your DBE participation falls short of your overall goal, unless you have failed to administer your program in good faith.

(b) If you do not have an approved DBE program or overall goal, or if you fail to implement your program in good faith, you are in noncompliance with this part.

§26.49 How are overall goals established for transit vehicle manufacturers?

(a) If you are an FTA recipient, you must require in your DBE program that each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, certify that it has complied with the requirements of this section. You do not include FTA assistance used in transit vehicle procurements in the base amount from which your overall goal is calculated.

(b) If you are a transit vehicle manufacturer, you must establish and submit for FTA's approval an annual overall percentage goal. In setting your overall goal, you should be guided, to the extent applicable, by the principles underlying §26.45. The base from which you calculate this goal is the amount of FTA financial assistance included in transit vehicle contracts you will perform during the fiscal year in question. You must exclude from this base funds attributable to work performed outside the United States and its territories, possessions, and commonwealths. The requirements and procedures

of this part with respect to submission and approval of overall goals apply to you as they do to recipients.

(c) As a transit vehicle manufacturer, you may make the certification required by this section if you have submitted the goal this section requires and FTA has approved it or not disapproved it.

(d) As a recipient, you may, with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of complying through the procedures of this section.

(e) If you are an FHWA or FAA recipient, you may, with FHWA or FAA approval, use the procedures of this section with respect to procurements of vehicles or specialized equipment. If you choose to do so, then the manufacturers of this equipment must meet the same requirements (including goal approval by FHWA or FAA) as transit vehicle manufacturers must meet in FTA-assisted procurements.

§26.51 What means do recipients use to meet overall goals?

(a) You must meet the maximum feasible portion of your overall goal by using race-neutral means of facilitating DBE participation. Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures, is awarded a subcontract on a prime contract that does not carry a DBE goal, or even if there is a DBE goal, wins a subcontract from a prime contractor that did not consider its DBE status in making the award (e.g., a prime contractor that uses a strict low bid system to award subcontracts).

(b) Race-neutral means include, but are not limited to, the following:

(1) Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE, and other small businesses, participation (e.g., unbundling large contracts to make them more accessible to small businesses, requiring or encouraging prime contractors to subcontract portions of work that they might otherwise perform with their own forces);

(2) Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing);

(3) Providing technical assistance and other services;

(4) Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);

(5) Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;

(6) Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;

(7) Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;

(8) Ensuring distribution of your DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and

(9) Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

(c) Each time you submit your overall goal for review by the concerned operating administration, you must also submit your projection of the portion of the goal that you expect to meet through race-neutral means and your basis for that projection. This projection is subject to approval by the concerned operating administration, in conjunction with its review of your overall goal.

(d) You must establish contract goals to meet any portion of your overall goal you do not project being able to meet using race-neutral means.

(e) The following provisions apply to the use of contract goals:

(1) You may use contract goals only on those DOT-assisted contracts that have subcontracting possibilities.

(2) You are not required to set a contract goal on every DOT-assisted contract. You are not required to set each contract goal at the same percentage level as the overall goal. The goal for a specific contract may be higher or lower than that percentage level of the overall goal, depending on such factors as the type of work involved, the location of the work, and the availability of DBEs for the work of the particular contract. However, over the period covered by your overall goal, you must set contract goals so that they will cumulatively result in meeting any portion of your overall goal you do not project being able to meet through the use of race-neutral means.

(3) Operating administration approval of each contract goal is not necessarily required. However, operating administrations may review and approve or disapprove any contract goal you establish.

(4) Your contract goals must provide for participation by all certified DBEs and must not be subdivided into group-specific goals.

(f) To ensure that your DBE program continues to be narrowly tailored to overcome the effects of discrimination, you must adjust your use of contract goals as follows:

(1) If your approved projection under paragraph (c) of this section estimates that you can meet your entire overall goal for a given year through race-neutral means, you must implement your program without setting contract goals during that year.

Example to Paragraph (f)(1): Your overall goal for Year I is 12 percent. You estimate that you can obtain 12 percent or more DBE participation through the use of race-neutral measures, without any use of contract goals. In this case, you do not set any contract goals for the contracts that will be performed in Year I.

(2) If, during the course of any year in which you are using contract goals, you determine that you will exceed your overall goal, you must reduce or eliminate the use of contract goals to the extent necessary to ensure that the use of contract goals does not result in exceeding the overall goal. If you determine that you will fall short of your overall goal, then you must make appropriate modifications in your use of race-neutral and/or race-conscious measures to allow you to meet the overall goal.

Example to Paragraph (f)(2): In Year II, your overall goal is 12 percent. You have estimated that you can obtain 5 percent DBE participation through use of race-neutral measures. You therefore plan to obtain the remaining 7 percent participation through use of DBE goals. By September, you have already obtained 11 percent DBE participation for the year. For contracts let during the remainder of the year, you use contract goals only to the extent necessary to obtain an additional one percent DBE participation. However, if you determine in September that your participation for the year is likely to be only 8 percent total, then you would increase your use of race-neutral and/or race-conscious means during the remainder of the year in order to achieve your overall goal.

(3) If the DBE participation you have obtained by race-neutral means alone meets or exceeds your overall goals for two consecutive years, you are not required to make a projection of the amount of your goal you can meet using such means in the next year. You do not set contract goals on any contracts in the next year. You continue using only race-neutral means to meet your overall goals unless and until you do not meet your overall goal for a year.

Example to Paragraph (f)(3): Your overall goal for Years I and Year II is 10 percent. The DBE participation you obtain through race-neutral measures alone is 10 percent or more in each year. (For this purpose, it does not matter whether you obtained additional DBE participation through using contract goals in these years.) In Year III and following years, you do not need to make a projection under paragraph (c) of this section of the portion of your overall goal you expect to meet using race-neutral means. You simply use race-neutral means to achieve your overall goals. However, if in Year VI your DBE participation falls short

of your overall goal, then you must make a paragraph (c) projection for Year VII and, if necessary, resume use of contract goals in that year.

(4) If you obtain DBE participation that exceeds your overall goal in two consecutive years through the use of contract goals (i.e., not through the use of race-neutral means alone), you must reduce your use of contract goals proportionately in the following year.

Example to Paragraph (f)(4): In Years I and II, your overall goal is 12 percent, and you obtain 14 and 16 percent DBE participation, respectively. You have exceeded your goals over the two-year period by an average of 25 percent. In Year III, your overall goal is again 12 percent, and your paragraph (c) projection estimates that you will obtain 4 percent DBE participation through race-neutral means and 8 percent through contract goals. You then reduce the contract goal projection by 25 percent (i.e., from 8 to 6 percent) and set contract goals accordingly during the year. If in Year III you obtain 11 percent participation, you do not use this contract goal adjustment mechanism for Year IV, because there have not been two *consecutive* years of exceeding overall goals.

(g) In any year in which you project meeting part of your goal through race-neutral means and the remainder through contract goals, you must maintain data separately on DBE achievements in those contracts with and without contract goals, respectively. You must report this data to the concerned operating administration as provided in §26.11.

§26.53 What are the good faith efforts procedures recipients follow in situations where there are contract goals?

(a) When you have established a DBE contract goal, you must award the contract only to a bidder/offeror who makes good faith efforts to meet it. You must determine that a bidder/offeror has made good faith efforts if the bidder/offeror does either of the following things:

(1) Documents that it has obtained enough DBE participation to meet the goal; or

(2) Documents that it made adequate good faith efforts to meet the goal, even though it did not succeed in obtaining enough DBE participation to do so. If the bidder/offeror does document adequate good faith efforts, you must not deny award of the contract on the basis that the bidder/offeror failed to meet the goal. See Appendix A of this part for guidance in determining the adequacy of a bidder/offeror's good faith efforts.

(b) In your solicitations for DOT-assisted contracts for which a contract goal has been established, you must require the following:

(1) Award of the contract will be conditioned on meeting the requirements of this section;

(2) All bidders/offerors will be required to submit the following information to the recipient, at the time provided in paragraph (b)(3) of this section:

(i) The names and addresses of DBE firms that will participate in the contract;

(ii) A description of the work that each DBE will perform;

(iii) The dollar amount of the participation of each DBE firm participating;

(iv) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;

(v) Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and

(vi) If the contract goal is not met, evidence of good faith efforts (see Appendix A of this part); and

(3) At your discretion, the bidder/offeror must present the information required by paragraph (b)(2) of this section --

(i) Under sealed bid procedures, as a matter of responsiveness, or with initial proposals, under contract negotiation procedures; or

(ii) At any time before you commit yourself to the performance of the contract by the bidder/offeror, as a matter of responsibility.

(c) You must make sure all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before committing yourself to the performance of the contract by the bidder/offeror.

(d) If you determine that the apparent successful bidder/offeror has failed to meet the requirements of paragraph (a) of this section, you must, before awarding the contract, provide the bidder/offeror an opportunity for administrative reconsideration.

(1) As part of this reconsideration, the bidder/offeror must have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so.

(2) Your decision on reconsideration must be made by an official who did not take part in the original determination that the bidder/offeror failed to meet the goal or make adequate good faith efforts to do so.

(3) The bidder/offeror must have the opportunity to meet in person with your reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so.

(4) You must send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so.

(5) The result of the reconsideration process is not administratively appealable to the Department of Transportation.

(e) In a "design-build" or "turnkey" contracting situation, in which the recipient lets a master contract to a contractor, who in turn lets subsequent subcontracts for the work of the project, a recipient may establish a goal for the project. The master contractor then establishes contract goals, as appropriate, for the subcontracts it lets. Recipients must

maintain oversight of the master contractor's activities to ensure that they are conducted consistent with the requirements of this part.

(f)(1) You must require that a prime contractor not terminate for convenience a DBE subcontractor listed in response to paragraph (b)(2) of this section (or an approved substitute DBE firm) and then perform the work of the terminated subcontract with its own forces or those of an affiliate, without your prior written consent.

(2) When a DBE subcontractor is terminated, or fails to complete its work on the contract for any reason, you must require the prime contractor to make good faith efforts to find another DBE subcontractor to substitute for the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal you established for the procurement.

(3) You must include in each prime contract a provision for appropriate administrative remedies that you will invoke if the prime contractor fails to comply with the requirements of this section.

(g) You must apply the requirements of this section to DBE bidders/offers for prime contracts. In determining whether a DBE bidder/offeror for a prime contract has met a contract goal, you count the work the DBE has committed to performing with its own forces as well as the work that it has committed to be performed by DBE subcontractors and DBE suppliers.

§26.55 How is DBE participation counted toward goals?

(a) When a DBE participates in a contract, you count only the value of the work actually performed by the DBE toward DBE goals.

(1) Count the entire amount of that portion of a construction contract (or other contract not covered by paragraph (a)(2) of this section) that is performed by the DBE's own forces. Include the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).

(2) Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, toward DBE goals, provided you determine the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.

(3) When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.

(b) When a DBE performs as a participant in a joint venture, count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.

(c) Count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function on that contract.

(1) A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the

material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, you must evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.

(2) A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, you must examine similar transactions, particularly those in which DBEs do not participate.

(3) If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, you must presume that it is not performing a commercially useful function.

(4) When a DBE is presumed not to be performing a commercially useful function as provided in paragraph (c)(3) of this section, the DBE may present evidence to rebut this presumption. You may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.

(5) Your decisions on commercially useful function matters are subject to review by the concerned operating administration, but are not administratively appealable to DOT.

(d) Use the following factors in determining whether a DBE trucking company is performing a commercially useful function:

(1) The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.

- (2) The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
- (3) The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
- (4) The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
- (5) The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by DBE-owned trucks on the contract. Additional participation by non-DBE lessees receives credit only for the fee or commission it receives as a result of the lease arrangement. If a recipient chooses this approach, it must obtain written consent from the appropriate Department Operating Administration.

Example to this paragraph (d)(5): DBE Firm X uses two of its own trucks on a contract. It leases two trucks from DBE Firm Y and six trucks from non-DBE Firm Z. DBE credit would be awarded for the total value of transportation services provided by Firm X and Firm Y, and may also be awarded for the total value of transportation services provided by four of the six trucks provided by Firm Z. In all, full credit would be allowed for the participation of eight trucks. With respect to the other two trucks provided by Firm Z, DBE credit could be awarded only for the fees or commissions pertaining to those trucks Firm X receives as a result of the lease with Firm Z.

(6) For purposes of this paragraph (d), a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

(e) Count expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:

(1)(i) If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies toward DBE goals.

(ii) For purposes of this paragraph (e)(1), a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

(2)(i) If the materials or supplies are purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies toward DBE goals.

(ii) For purposes of this section, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

(A) To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.

(B) A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided in this paragraph (e)(2)(ii) if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.

(C) Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph (e)(2).

(3) With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions

charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals, provided you determine the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the materials and supplies themselves toward DBE goals, however.

(f) If a firm is not currently certified as a DBE in accordance with the standards of subpart D of this part at the time of the execution of the contract, do not count the firm's participation toward any DBE goals, except as provided for in §26.87(i)).

(g) Do not count the dollar value of work performed under a contract with a firm after it has ceased to be certified toward your overall goal.

(h) Do not count the participation of a DBE subcontractor toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.

[64 FR 5126, Feb. 2, 1999, as amended at 65 FR 68951, Nov. 15, 2000; 68 FR 35554, June 16, 2003]

Subpart D -- Certification Standards

§26.61 How are burdens of proof allocated in the certification process?

(a) In determining whether to certify a firm as eligible to participate as a DBE, you must apply the standards of this subpart.

(b) The firm seeking certification has the burden of demonstrating to you, by a preponderance of the evidence, that it meets the requirements of this subpart concerning group membership or individual disadvantage, business size, ownership, and control.

(c) You must rebuttably presume that members of the designated groups identified in §26.67(a) are socially and economically disadvantaged. This means they do not have the burden of proving to you that they are socially and economically disadvantaged. In order to obtain the benefit of the rebuttable presumption, individuals must submit a signed, notarized statement that they are a member of one of the groups in §26.67(a). Applicants do have the obligation to provide you information concerning their economic disadvantage (*see* §26.67).

(d) Individuals who are not presumed to be socially and economically disadvantaged, and individuals concerning whom the presumption of disadvantage has been rebutted, have the burden of proving to you, by a preponderance of the evidence, that they are socially and economically disadvantaged. (See Appendix E of this part.)

(e) You must make determinations concerning whether individuals and firms have met their burden of demonstrating group membership, ownership, control, and social and economic disadvantage (where disadvantage must be demonstrated on an individual basis) by considering all the facts in the record, viewed as a whole.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35554, June 16, 2003]

§26.63 What rules govern group membership determinations?

(a)(1) If, after reviewing the signed notarized statement of membership in a presumptively disadvantaged group (*see* §26.61(c)), you have a well founded reason to question the individual's claim of membership in that group, you must require the individual to present additional evidence that he or she is a member of the group.

(2) You must provide the individual a written explanation of your reasons for questioning his or her group membership and a written request for additional evidence as outlined in paragraph (b) of this section.

(3) In implementing this section, you must take special care to ensure that you do not impose a disproportionate burden on members of any particular designated group.

Imposing a disproportionate burden on members of a particular group could violate §26.7(b) and/or Title VI of the Civil Rights Act of 1964 and 49 CFR part 21.

(b) In making such a determination, you must consider whether the person has held himself out to be a member of the group over a long period of time prior to application for certification and whether the person is regarded as a member of the group by the relevant community. You may require the applicant to produce appropriate documentation of group membership.

(1) If you determine that an individual claiming to be a member of a group presumed to be disadvantaged is not a member of a designated disadvantaged group, the individual must demonstrate social and economic disadvantage on an individual basis.

(2) Your decisions concerning membership in a designated group are subject to the certification appeals procedure of §26.89.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35554, June 16, 2003]

§26.65 What rules govern business size determinations?

(a) To be an eligible DBE, a firm (including its affiliates) must be an existing small business, as defined by Small Business Administration (SBA) standards. You must apply current SBA business size standard(s) found in 13 CFR part 121 appropriate to the type(s) of work the firm seeks to perform in DOT-assisted contracts.

(b) Even if it meets the requirements of paragraph (a) of this section, a firm is not an eligible DBE in any Federal fiscal year if the firm (including its affiliates) has had average annual gross receipts, as defined by SBA regulations (see 13 CFR 121.402), over the firm's previous three fiscal years, in excess of \$16.6 million. The Secretary adjusts this amount for inflation from time to time.

§26.67 What rules determine social and economic disadvantage?

(a) *Presumption of disadvantage.* (1) You must rebuttably presume that citizens of the United States (or lawfully admitted permanent residents) who are women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans,

Subcontinent Asian Americans, or other minorities found to be disadvantaged by the SBA, are socially and economically disadvantaged individuals. You must require applicants to submit a signed, notarized certification that each presumptively disadvantaged owner is, in fact, socially and economically disadvantaged.

(2) (i) You must require each individual owner of a firm applying to participate as a DBE (except a firm applying to participate as a DBE airport concessionaire) whose ownership and control are relied upon for DBE certification to certify that he or she has a personal net worth that does not exceed \$750,000.

(ii) You must require each individual who makes this certification to support it with a signed, notarized statement of personal net worth, with appropriate supporting documentation. This statement and documentation must not be unduly lengthy, burdensome, or intrusive.

(iii) In determining an individual's net worth, you must observe the following requirements:

(A) Exclude an individual's ownership interest in the applicant firm;

(B) Exclude the individual's equity in his or her primary residence (except any portion of such equity that is attributable to excessive withdrawals from the applicant firm).

(C) Do not use a contingent liability to reduce an individual's net worth.

(D) With respect to assets held in vested pension plans, Individual Retirement Accounts, 401(k) accounts, or other retirement savings or investment programs in which the assets cannot be distributed to the individual at the present time without significant adverse tax or interest consequences, include only the present value of such assets, less the tax and interest penalties that would accrue if the asset were distributed at the present time.

(iv) Notwithstanding any provision of Federal or state law, you must not release an individual's personal net worth statement nor any documentation supporting it to any third party without the written consent of the submitter. *Provided*, that you must transmit

this information to DOT in any certification appeal proceeding under §26.89 in which the disadvantaged status of the individual is in question.

(b) *Rebuttal of presumption of disadvantage.* (1) If the statement of personal net worth that an individual submits under paragraph (a)(2) of this section shows that the individual's personal net worth exceeds \$750,000, the individual's presumption of economic disadvantage is rebutted. You are not required to have a proceeding under paragraph (b)(2) of this section in order to rebut the presumption of economic disadvantage in this case.

(2) If you have a reasonable basis to believe that an individual who is a member of one of the designated groups is not, in fact, socially and/or economically disadvantaged you may, at any time, start a proceeding to determine whether the presumption should be regarded as rebutted with respect to that individual. Your proceeding must follow the procedures of §26.87.

(3) In such a proceeding, you have the burden of demonstrating, by a preponderance of the evidence, that the individual is not socially and economically disadvantaged. You may require the individual to produce information relevant to the determination of his or her disadvantage.

(4) When an individual's presumption of social and/or economic disadvantage has been rebutted, his or her ownership and control of the firm in question cannot be used for purposes of DBE eligibility under this subpart unless and until he or she makes an individual showing of social and/or economic disadvantage. If the basis for rebutting the presumption is a determination that the individual's personal net worth exceeds \$750,000, the individual is no longer eligible for participation in the program and cannot regain eligibility by making an individual showing of disadvantage.

(c) [Reserved]

(d) *Individual determinations of social and economic disadvantage.* Firms owned and controlled by individuals who are not presumed to be socially and economically disadvantaged (including individuals whose presumed disadvantage has been rebutted)

may apply for DBE certification. You must make a case-by-case determination of whether each individual whose ownership and control are relied upon for DBE certification is socially and economically disadvantaged. In such a proceeding, the applicant firm has the burden of demonstrating to you, by a preponderance of the evidence, that the individuals who own and control it are socially and economically disadvantaged. An individual whose personal net worth exceeds \$750,000 shall not be deemed to be economically disadvantaged. In making these determinations, use the guidance found in Appendix E of this part. You must require that applicants provide sufficient information to permit determinations under the guidance of Appendix E of this part.

[64 FR 5126, Feb. 2, 1999, as amended at 64 FR 34570, June 28, 1999; 68 FR 35554, June 16, 2003]

§26.69 What rules govern determinations of ownership?

(a) In determining whether the socially and economically disadvantaged participants in a firm own the firm, you must consider all the facts in the record, viewed as a whole.

(b) To be an eligible DBE, a firm must be at least 51 percent owned by socially and economically disadvantaged individuals.

(1) In the case of a corporation, such individuals must own at least 51 percent of the each class of voting stock outstanding and 51 percent of the aggregate of all stock outstanding.

(2) In the case of a partnership, 51 percent of each class of partnership interest must be owned by socially and economically disadvantaged individuals. Such ownership must be reflected in the firm's partnership agreement.

(3) In the case of a limited liability company, at least 51 percent of each class of member interest must be owned by socially and economically disadvantaged individuals.

(c) The firm's ownership by socially and economically disadvantaged individuals must be real, substantial, and continuing, going beyond pro forma ownership of the firm as reflected in ownership documents. The disadvantaged owners must enjoy the customary incidents of ownership, and share in the risks and profits commensurate with their ownership interests, as demonstrated by the substance, not merely the form, of arrangements.

(d) All securities that constitute ownership of a firm shall be held directly by disadvantaged persons. Except as provided in this paragraph (d), no securities or assets held in trust, or by any guardian for a minor, are considered as held by disadvantaged persons in determining the ownership of a firm. However, securities or assets held in trust are regarded as held by a disadvantaged individual for purposes of determining ownership of the firm, if --

(1) The beneficial owner of securities or assets held in trust is a disadvantaged individual, and the trustee is the same or another such individual; or

(2) The beneficial owner of a trust is a disadvantaged individual who, rather than the trustee, exercises effective control over the management, policy-making, and daily operational activities of the firm. Assets held in a revocable living trust may be counted only in the situation where the same disadvantaged individual is the sole grantor, beneficiary, and trustee.

(e) The contributions of capital or expertise by the socially and economically disadvantaged owners to acquire their ownership interests must be real and substantial. Examples of insufficient contributions include a promise to contribute capital, an unsecured note payable to the firm or an owner who is not a disadvantaged individual, or mere participation in a firm's activities as an employee. Debt instruments from financial institutions or other organizations that lend funds in the normal course of their business do not render a firm ineligible, even if the debtor's ownership interest is security for the loan.

(f) The following requirements apply to situations in which expertise is relied upon as part of a disadvantaged owner's contribution to acquire ownership:

(1) The owner's expertise must be --

(i) In a specialized field;

(ii) Of outstanding quality;

(iii) In areas critical to the firm's operations;

(iv) Indispensable to the firm's potential success;

(v) Specific to the type of work the firm performs; and

(vi) Documented in the records of the firm. These records must clearly show the contribution of expertise and its value to the firm.

(2) The individual whose expertise is relied upon must have a significant financial investment in the firm.

(g) You must always deem as held by a socially and economically disadvantaged individual, for purposes of determining ownership, all interests in a business or other assets obtained by the individual --

(1) As the result of a final property settlement or court order in a divorce or legal separation, provided that no term or condition of the agreement or divorce decree is inconsistent with this section; or

(2) Through inheritance, or otherwise because of the death of the former owner.

(h)(1) You must presume as not being held by a socially and economically disadvantaged individual, for purposes of determining ownership, all interests in a business or other assets obtained by the individual as the result of a gift, or transfer without adequate consideration, from any non-disadvantaged individual or non-DBE firm who is --

- (i) Involved in the same firm for which the individual is seeking certification, or an affiliate of that firm;
- (ii) Involved in the same or a similar line of business; or
- (iii) Engaged in an ongoing business relationship with the firm, or an affiliate of the firm, for which the individual is seeking certification.

(2) To overcome this presumption and permit the interests or assets to be counted, the disadvantaged individual must demonstrate to you, by clear and convincing evidence, that --

- (i) The gift or transfer to the disadvantaged individual was made for reasons other than obtaining certification as a DBE; and
- (ii) The disadvantaged individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-disadvantaged individual who provided the gift or transfer.

(i) You must apply the following rules in situations in which marital assets form a basis for ownership of a firm:

(1) When marital assets (other than the assets of the business in question), held jointly or as community property by both spouses, are used to acquire the ownership interest asserted by one spouse, you must deem the ownership interest in the firm to have been acquired by that spouse with his or her own individual resources, provided that the other spouse irrevocably renounces and transfers all rights in the ownership interest in the manner sanctioned by the laws of the state in which either spouse or the firm is domiciled. You do not count a greater portion of joint or community property assets toward ownership than state law would recognize as belonging to the socially and economically disadvantaged owner of the applicant firm.

(2) A copy of the document legally transferring and renouncing the other spouse's rights in the jointly owned or community assets used to acquire an ownership interest in the firm must be included as part of the firm's application for DBE certification.

(j) You may consider the following factors in determining the ownership of a firm. However, you must not regard a contribution of capital as failing to be real and substantial, or find a firm ineligible, solely because --

(1) A socially and economically disadvantaged individual acquired his or her ownership interest as the result of a gift, or transfer without adequate consideration, other than the types set forth in paragraph (h) of this section;

(2) There is a provision for the co-signature of a spouse who is not a socially and economically disadvantaged individual on financing agreements, contracts for the purchase or sale of real or personal property, bank signature cards, or other documents; or

(3) Ownership of the firm in question or its assets is transferred for adequate consideration from a spouse who is not a socially and economically disadvantaged individual to a spouse who is such an individual. In this case, you must give particularly close and careful scrutiny to the ownership and control of a firm to ensure that it is owned and controlled, in substance as well as in form, by a socially and economically disadvantaged individual.

§26.71 What rules govern determinations concerning control?

(a) In determining whether socially and economically disadvantaged owners control a firm, you must consider all the facts in the record, viewed as a whole.

(b) Only an independent business may be certified as a DBE. An independent business is one the viability of which does not depend on its relationship with another firm or firms.

(1) In determining whether a potential DBE is an independent business, you must scrutinize relationships with non-DBE firms, in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources.

(2) You must consider whether present or recent employer/employee relationships between the disadvantaged owner(s) of the potential DBE and non-DBE firms or

persons associated with non-DBE firms compromise the independence of the potential DBE firm.

(3) You must examine the firm's relationships with prime contractors to determine whether a pattern of exclusive or primary dealings with a prime contractor compromises the independence of the potential DBE firm.

(4) In considering factors related to the independence of a potential DBE firm, you must consider the consistency of relationships between the potential DBE and non-DBE firms with normal industry practice.

(c) A DBE firm must not be subject to any formal or informal restrictions which limit the customary discretion of the socially and economically disadvantaged owners. There can be no restrictions through corporate charter provisions, by-law provisions, contracts or any other formal or informal devices (e.g., cumulative voting rights, voting powers attached to different classes of stock, employment contracts, requirements for concurrence by non-disadvantaged partners, conditions precedent or subsequent, executory agreements, voting trusts, restrictions on or assignments of voting rights) that prevent the socially and economically disadvantaged owners, without the cooperation or vote of any non-disadvantaged individual, from making any business decision of the firm. This paragraph does not preclude a spousal co-signature on documents as provided for in §26.69(j)(2).

(d) The socially and economically disadvantaged owners must possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day as well as long-term decisions on matters of management, policy and operations.

(1) A disadvantaged owner must hold the highest officer position in the company (e.g., chief executive officer or president).

(2) In a corporation, disadvantaged owners must control the board of directors.

(3) In a partnership, one or more disadvantaged owners must serve as general partners, with control over all partnership decisions.

(e) Individuals who are not socially and economically disadvantaged may be involved in a DBE firm as owners, managers, employees, stockholders, officers, and/or directors. Such individuals must not, however, possess or exercise the power to control the firm, or be disproportionately responsible for the operation of the firm.

(f) The socially and economically disadvantaged owners of the firm may delegate various areas of the management, policymaking, or daily operations of the firm to other participants in the firm, regardless of whether these participants are socially and economically disadvantaged individuals. Such delegations of authority must be revocable, and the socially and economically disadvantaged owners must retain the power to hire and fire any person to whom such authority is delegated. The managerial role of the socially and economically disadvantaged owners in the firm's overall affairs must be such that the recipient can reasonably conclude that the socially and economically disadvantaged owners actually exercise control over the firm's operations, management, and policy.

(g) The socially and economically disadvantaged owners must have an overall understanding of, and managerial and technical competence and experience directly related to, the type of business in which the firm is engaged and the firm's operations. The socially and economically disadvantaged owners are not required to have experience or expertise in every critical area of the firm's operations, or to have greater experience or expertise in a given field than managers or key employees. The socially and economically disadvantaged owners must have the ability to intelligently and critically evaluate information presented by other participants in the firm's activities and to use this information to make independent decisions concerning the firm's daily operations, management, and policymaking. Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the principal business activities of the firm is insufficient to demonstrate control.

(h) If state or local law requires the persons to have a particular license or other credential in order to own and/or control a certain type of firm, then the socially and economically disadvantaged persons who own and control a potential DBE firm of that type must possess the required license or credential. If state or local law does not require such a person to have such a license or credential to own and/or control a firm, you must not deny certification solely on the ground that the person lacks the license or credential. However, you may take into account the absence of the license or credential as one factor in determining whether the socially and economically disadvantaged owners actually control the firm.

(i)(1) You may consider differences in remuneration between the socially and economically disadvantaged owners and other participants in the firm in determining whether to certify a firm as a DBE. Such consideration shall be in the context of the duties of the persons involved, normal industry practices, the firm's policy and practice concerning reinvestment of income, and any other explanations for the differences proffered by the firm. You may determine that a firm is controlled by its socially and economically disadvantaged owner although that owner's remuneration is lower than that of some other participants in the firm.

(2) In a case where a non-disadvantaged individual formerly controlled the firm, and a socially and economically disadvantaged individual now controls it, you may consider a difference between the remuneration of the former and current controller of the firm as a factor in determining who controls the firm, particularly when the non-disadvantaged individual remains involved with the firm and continues to receive greater compensation than the disadvantaged individual.

(j) In order to be viewed as controlling a firm, a socially and economically disadvantaged owner cannot engage in outside employment or other business interests that conflict with the management of the firm or prevent the individual from devoting sufficient time and attention to the affairs of the firm to control its activities. For example, absentee ownership of a business and part-time work in a full-time firm are not viewed as constituting control. However, an individual could be viewed as controlling a part-time

business that operates only on evenings and/or weekends, if the individual controls it all the time it is operating.

(k)(1) A socially and economically disadvantaged individual may control a firm even though one or more of the individual's immediate family members (who themselves are not socially and economically disadvantaged individuals) participate in the firm as a manager, employee, owner, or in another capacity. Except as otherwise provided in this paragraph, you must make a judgment about the control the socially and economically disadvantaged owner exercises vis-a-vis other persons involved in the business as you do in other situations, without regard to whether or not the other persons are immediate family members.

(2) If you cannot determine that the socially and economically disadvantaged owners -- as distinct from the family as a whole -- control the firm, then the socially and economically disadvantaged owners have failed to carry their burden of proof concerning control, even though they may participate significantly in the firm's activities.

(l) Where a firm was formerly owned and/or controlled by a non-disadvantaged individual (whether or not an immediate family member), ownership and/or control were transferred to a socially and economically disadvantaged individual, and the non-disadvantaged individual remains involved with the firm in any capacity, the disadvantaged individual now owning the firm must demonstrate to you, by clear and convincing evidence, that:

(1) The transfer of ownership and/or control to the disadvantaged individual was made for reasons other than obtaining certification as a DBE; and

(2) The disadvantaged individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-disadvantaged individual who formerly owned and/or controlled the firm.

(m) In determining whether a firm is controlled by its socially and economically disadvantaged owners, you may consider whether the firm owns equipment necessary to perform its work. However, you must not determine that a firm is not controlled by

socially and economically disadvantaged individuals solely because the firm leases, rather than owns, such equipment, where leasing equipment is a normal industry practice and the lease does not involve a relationship with a prime contractor or other party that compromises the independence of the firm.

(n) You must grant certification to a firm only for specific types of work in which the socially and economically disadvantaged owners have the ability to control the firm. To become certified in an additional type of work, the firm need demonstrate to you only that its socially and economically disadvantaged owners are able to control the firm with respect to that type of work. You may not, in this situation, require that the firm be recertified or submit a new application for certification, but you must verify the disadvantaged owner's control of the firm in the additional type of work.

(o) A business operating under a franchise or license agreement may be certified if it meets the standards in this subpart and the franchiser or licensor is not affiliated with the franchisee or licensee. In determining whether affiliation exists, you should generally not consider the restraints relating to standardized quality, advertising, accounting format, and other provisions imposed on the franchisee or licensee by the franchise agreement or license, provided that the franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. Alternatively, even though a franchisee or licensee may not be controlled by virtue of such provisions in the franchise agreement or license, affiliation could arise through other means, such as common management or excessive restrictions on the sale or transfer of the franchise interest or license.

(p) In order for a partnership to be controlled by socially and economically disadvantaged individuals, any non-disadvantaged partners must not have the power, without the specific written concurrence of the socially and economically disadvantaged partner(s), to contractually bind the partnership or subject the partnership to contract or tort liability.

(q) The socially and economically disadvantaged individuals controlling a firm may use an employee leasing company. The use of such a company does not preclude the

socially and economically disadvantaged individuals from controlling their firm if they continue to maintain an employer-employee relationship with the leased employees. This includes being responsible for hiring, firing, training, assigning, and otherwise controlling the on-the-job activities of the employees, as well as ultimate responsibility for wage and tax obligations related to the employees.

§26.73 What are other rules affecting certification?

(a)(1) Consideration of whether a firm performs a commercially useful function or is a regular dealer pertains solely to counting toward DBE goals the participation of firms that have already been certified as DBEs. Except as provided in paragraph (a)(2) of this section, you must not consider commercially useful function issues in any way in making decisions about whether to certify a firm as a DBE.

(2) You may consider, in making certification decisions, whether a firm has exhibited a pattern of conduct indicating its involvement in attempts to evade or subvert the intent or requirements of the DBE program.

(b) You must evaluate the eligibility of a firm on the basis of present circumstances. You must not refuse to certify a firm based solely on historical information indicating a lack of ownership or control of the firm by socially and economically disadvantaged individuals at some time in the past, if the firm currently meets the ownership and control standards of this part. Nor must you refuse to certify a firm solely on the basis that it is a newly formed firm.

(c) DBE firms and firms seeking DBE certification shall cooperate fully with your requests (and DOT requests) for information relevant to the certification process. Failure or refusal to provide such information is a ground for a denial or removal of certification.

(d) Only firms organized for profit may be eligible DBEs. Not-for-profit organizations, even though controlled by socially and economically disadvantaged individuals, are not eligible to be certified as DBEs.

(e) An eligible DBE firm must be owned by individuals who are socially and economically disadvantaged. Except as provided in this paragraph, a firm that is not owned by such individuals, but instead is owned by another firm -- even a DBE firm -- cannot be an eligible DBE.

(1) If socially and economically disadvantaged individuals own and control a firm through a parent or holding company, established for tax, capitalization or other purposes consistent with industry practice, and the parent or holding company in turn owns and controls an operating subsidiary, you may certify the subsidiary if it otherwise meets all requirements of this subpart. In this situation, the individual owners and controllers of the parent or holding company are deemed to control the subsidiary through the parent or holding company.

(2) You may certify such a subsidiary only if there is cumulatively 51 percent ownership of the subsidiary by socially and economically disadvantaged individuals. The following examples illustrate how this cumulative ownership provision works:

Example 1: Socially and economically disadvantaged individuals own 100 percent of a holding company, which has a wholly-owned subsidiary. The subsidiary may be certified, if it meets all other requirements.

Example 2: Disadvantaged individuals own 100 percent of the holding company, which owns 51 percent of a subsidiary. The subsidiary may be certified, if all other requirements are met.

Example 3: Disadvantaged individuals own 80 percent of the holding company, which in turn owns 70 percent of a subsidiary. In this case, the cumulative ownership of the subsidiary by disadvantaged individuals is 56 percent (80 percent of the 70 percent). This is more than 51 percent, so you may certify the subsidiary, if all other requirements are met.

Example 4: Same as Example 2 or 3, but someone other than the socially and economically disadvantaged owners of the parent or holding company controls the subsidiary. Even though the subsidiary is owned by disadvantaged individuals, through the holding or parent company, you cannot certify it because it fails to meet control requirements.

Example 5: Disadvantaged individuals own 60 percent of the holding company, which in turn owns 51 percent of a subsidiary. In this case, the cumulative ownership of the subsidiary by disadvantaged individuals is about 31 percent. This is less than 51 percent, so you cannot certify the subsidiary.

Example 6: The holding company, in addition to the subsidiary seeking certification, owns several other companies. The combined gross receipts of the holding companies and its subsidiaries are greater than the size standard for the subsidiary seeking certification and/or the gross receipts cap of §26.65(b). Under the rules concerning affiliation, the subsidiary fails to meet the size standard and cannot be certified.

(f) Recognition of a business as a separate entity for tax or corporate purposes is not necessarily sufficient to demonstrate that a firm is an independent business, owned and controlled by socially and economically disadvantaged individuals.

(g) You must not require a DBE firm to be prequalified as a condition for certification unless the recipient requires all firms that participate in its contracts and subcontracts to be prequalified.

(h) A firm that is owned by an Indian tribe or Native Hawaiian organization, rather than by Indians or Native Hawaiians as individuals, may be eligible for certification. Such a firm must meet the size standards of §26.35. Such a firm must be controlled by socially and economically disadvantaged individuals, as provided in §26.71.

(i) The following special rules apply to the certification of firms related to Alaska Native Corporations (ANCs).

(1) Notwithstanding any other provisions of this subpart, a direct or indirect subsidiary corporation, joint venture, or partnership entity of an ANC is eligible for certification as a DBE if it meets all of the following requirements:

(i) The Settlement Common Stock of the underlying ANC and other stock of the ANC held by holders of the Settlement Common Stock and by Natives and descendants of Natives represents a majority of both the total equity of the ANC and the total voting power of the corporation for purposes of electing directors;

(ii) The shares of stock or other units of common ownership interest in the subsidiary, joint venture, or partnership entity held by the ANC and by holders of its Settlement Common Stock represent a majority of both the total equity of the entity and the total voting power of the entity for the purpose of electing directors, the general partner, or principal officers; and

(iii) The subsidiary, joint venture, or partnership entity has been certified by the Small Business Administration under the 8(a) or small disadvantaged business program.

(2) As a recipient to whom an ANC-related entity applies for certification, you do not use the DOT uniform application form (*see* Appendix F of this part). You must obtain from the firm documentation sufficient to demonstrate that entity meets the requirements of paragraph (i)(1) of this section. You must also obtain sufficient information about the firm to allow you to administer your program (*e.g.*, information that would appear in your DBE Directory).

(3) If an ANC-related firm does not meet all the conditions of paragraph (i)(1) of this section, then it must meet the requirements of paragraph (h) of this section in order to be certified, on the same basis as firms owned by Indian Tribes or Native Hawaiian Organizations.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35555, June 16, 2003]

Subpart E -- Certification Procedures

§26.81 What are the requirements for Unified Certification Programs?

(a) You and all other DOT recipients in your state must participate in a Unified Certification Program (UCP).

(1) Within three years of March 4, 1999, you and the other recipients in your state must sign an agreement establishing the UCP for that state and submit the agreement to the Secretary for approval. The Secretary may, on the basis of extenuating circumstances shown by the recipients in the state, extend this deadline for no more than one additional year.

(2) The agreement must provide for the establishment of a UCP meeting all the requirements of this section. The agreement must specify that the UCP will follow all certification procedures and standards of this part, on the same basis as recipients; that the UCP shall cooperate fully with oversight, review, and monitoring activities of DOT and its operating administrations; and that the UCP shall implement DOT directives and guidance concerning certification matters. The agreement shall also commit recipients to ensuring that the UCP has sufficient resources and expertise to carry out the requirements of this part. The agreement shall include an implementation schedule ensuring that the UCP is fully operational no later than 18 months following the approval of the agreement by the Secretary.

(3) Subject to approval by the Secretary, the UCP in each state may take any form acceptable to the recipients in that state.

(4) The Secretary shall review the UCP and approve it, disapprove it, or remand it to the recipients in the state for revisions. A complete agreement which is not disapproved or remanded within 180 days of its receipt is deemed to be accepted.

(5) If you and the other recipients in your state fail to meet the deadlines set forth in this paragraph (a), you shall have the opportunity to make an explanation to the Secretary why a deadline could not be met and why meeting the deadline was beyond your control. If you fail to make such an explanation, or the explanation does not justify the

failure to meet the deadline, the Secretary shall direct you to complete the required action by a date certain. If you and the other recipients fail to carry out this direction in a timely manner, you are collectively in noncompliance with this part.

(b) The UCP shall make all certification decisions on behalf of all DOT recipients in the state with respect to participation in the DOT DBE Program.

(1) Certification decisions by the UCP shall be binding on all DOT recipients within the state.

(2) The UCP shall provide "one-stop shopping" to applicants for certification, such that an applicant is required to apply only once for a DBE certification that will be honored by all recipients in the state.

(3) All obligations of recipients with respect to certification and nondiscrimination must be carried out by UCPs, and recipients may use only UCPs that comply with the certification and nondiscrimination requirements of this part.

(c) All certifications by UCPs shall be pre-certifications; i.e., certifications that have been made final before the due date for bids or offers on a contract on which a firm seeks to participate as a DBE.

(d) A UCP is not required to process an application for certification from a firm having its principal place of business outside the state if the firm is not certified by the UCP in the state in which it maintains its principal place of business. The "home state" UCP shall share its information and documents concerning the firm with other UCPs that are considering the firm's application.

(e) Subject to DOT approval as provided in this section, the recipients in two or more states may form a regional UCP. UCPs may also enter into written reciprocity agreements with other UCPs. Such an agreement shall outline the specific responsibilities of each participant. A UCP may accept the certification of any other UCP or DOT recipient.

(f) Pending the establishment of UCPs meeting the requirements of this section, you may enter into agreements with other recipients, on a regional or inter-jurisdictional basis, to perform certification functions required by this part. You may also grant reciprocity to other recipient's certification decisions.

(g) Each UCP shall maintain a unified DBE directory containing, for all firms certified by the UCP (including those from other states certified under the provisions of this section), the information required by §26.31. The UCP shall make the directory available to the public electronically, on the internet, as well as in print. The UCP shall update the electronic version of the directory by including additions, deletions, and other changes as soon as they are made.

(h) Except as otherwise specified in this section, all provisions of this subpart and subpart D of this part pertaining to recipients also apply to UCPs.

§26.83 What procedures do recipients follow in making certification decisions?

(a) You must ensure that only firms certified as eligible DBEs under this section participate as DBEs in your program.

(b) You must determine the eligibility of firms as DBEs consistent with the standards of subpart D of this part. When a UCP is formed, the UCP must meet all the requirements of subpart D of this part and this subpart that recipients are required to meet.

(c) You must take all the following steps in determining whether a DBE firm meets the standards of subpart D of this part:

(1) Perform an on-site visit to the offices of the firm. You must interview the principal officers of the firm and review their resumes and/or work histories. You must also perform an on-site visit to job sites if there are such sites on which the firm is working at the time of the eligibility investigation in your jurisdiction or local area. You may rely upon the site visit report of any other recipient with respect to a firm applying for certification;

(2) If the firm is a corporation, analyze the ownership of stock in the firm;

- (3) Analyze the bonding and financial capacity of the firm;
- (4) Determine the work history of the firm, including contracts it has received and work it has completed;
- (5) Obtain a statement from the firm of the type of work it prefers to perform as part of the DBE program and its preferred locations for performing the work, if any;
- (6) Obtain or compile a list of the equipment owned by or available to the firm and the licenses the firm and its key personnel possess to perform the work it seeks to do as part of the DBE program;
- (7) Require potential DBEs to complete and submit an appropriate application form, unless the potential DBE is an SBA certified firm applying pursuant to the DOT/SBA MOU.
 - (i) You must use the application form provided in Appendix F to this part without change or revision. However, you may provide in your DBE program, with the approval of the concerned operating administration, for supplementing the form by requesting additional information not inconsistent with this part.
 - (ii) You must make sure that the applicant attests to the accuracy and truthfulness of the information on the application form. This shall be done either in the form of an affidavit sworn to by the applicant before a person who is authorized by state law to administer oaths or in the form of an unsworn declaration executed under penalty of perjury of the laws of the United States.
 - (iii) You must review all information on the form prior to making a decision about the eligibility of the firm.
- (d) When another recipient, in connection with its consideration of the eligibility of a firm, makes a written request for certification information you have obtained about that firm (e.g., including application materials or the report of a site visit, if you have made one to the firm), you must promptly make the information available to the other recipient.

(e) When another DOT recipient has certified a firm, you have discretion to take any of the following actions:

(1) Certify the firm in reliance on the certification decision of the other recipient;

(2) Make an independent certification decision based on documentation provided by the other recipient, augmented by any additional information you require the applicant to provide; or

(3) Require the applicant to go through your application process without regard to the action of the other recipient.

(f) Subject to the approval of the concerned operating administration as part of your DBE program, you may impose a reasonable application fee for certification. Fee waivers shall be made in appropriate cases.

(g) You must safeguard from disclosure to unauthorized persons information gathered as part of the certification process that may reasonably be regarded as proprietary or other confidential business information, consistent with applicable Federal, state, and local law.

(h) Once you have certified a DBE, it shall remain certified for a period of at least three years unless and until its certification has been removed through the procedures of §26.87. You may not require DBEs to reapply for certification as a condition of continuing to participate in the program during this three-year period, unless the factual basis on which the certification was made changes.

(i) If you are a DBE, you must inform the recipient or UCP in writing of any change in circumstances affecting your ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material change in the information provided in your application form.

(1) Changes in management responsibility among members of a limited liability company are covered by this requirement.

(2) You must attach supporting documentation describing in detail the nature of such changes.

(3) The notice must take the form of an affidavit sworn to by the applicant before a person who is authorized by state law to administer oaths or of an unsworn declaration executed under penalty of perjury of the laws of the United States. You must provide the written notification within 30 days of the occurrence of the change. If you fail to make timely notification of such a change, you will be deemed to have failed to cooperate under §26.109(c).

(j) If you are a DBE, you must provide to the recipient, every year on the anniversary of the date of your certification, an affidavit sworn to by the firm's owners before a person who is authorized by state law to administer oaths or an unsworn declaration executed under penalty of perjury of the laws of the United States. This affidavit must affirm that there have been no changes in the firm's circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material changes in the information provided in its application form, except for changes about which you have notified the recipient under paragraph (i) of this section. The affidavit shall specifically affirm that your firm continues to meet SBA business size criteria and the overall gross receipts cap of this part, documenting this affirmation with supporting documentation of your firm's size and gross receipts. If you fail to provide this affidavit in a timely manner, you will be deemed to have failed to cooperate under §26.109(c).

(k) If you are a recipient, you must make decisions on applications for certification within 90 days of receiving from the applicant firm all information required under this part. You may extend this time period once, for no more than an additional 60 days, upon written notice to the firm, explaining fully and specifically the reasons for the extension. You may establish a different time frame in your DBE program, upon a showing that this time frame is not feasible, and subject to the approval of the concerned operating administration. Your failure to make a decision by the applicable deadline under this paragraph is deemed a constructive denial of the application, on the basis of which the firm may appeal to DOT under §26.89.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35555, June 16, 2003]

§26.84 How do recipients process applications submitted pursuant to the DOT/SBA MOU?

(a) When an SBA-certified firm applies for certification pursuant to the DOT/SBA MOU, you must accept the certification applications, forms and packages submitted by a firm to the SBA for either the 8(a) BD or SDB programs, in lieu of requiring the applicant firm to complete your own application forms and packages. The applicant may submit the package directly, or may request that the SBA forward the package to you. Pursuant to the MOU, the SBA will forward the package within thirty days.

(b) If necessary, you may request additional relevant information from the SBA. The SBA will provide this additional material within forty-five days of your written request.

(c) Before certifying a firm based on its 8(a) BD or SDB certification, you must conduct an on-site review of the firm (*see* §26.83(c)(1)). If the SBA conducted an on-site review, you may rely on the SBA's report of the on-site review. In connection with this review, you may also request additional relevant information from the firm.

(d) Unless you determine, based on the on-site review and information obtained in connection with it, that the firm does not meet the eligibility requirements of Subpart D of this part, you must certify the firm.

(e) You are not required to process an application for certification from an SBA-certified firm having its principal place of business outside the state(s) in which you operate unless there is a report of a "home state" on-site review on which you may rely.

(f) You are not required to process an application for certification from an SBA-certified firm if the firm does not provide products or services that you use in your DOT-assisted programs or airport concessions.

[68 FR 35555, June 16, 2003]

§26.85 How do recipients respond to requests from DBE-certified firms or the SBA made pursuant to the DOT/SBA MOU?

- (a) Upon receipt of a signed, written request from a DBE-certified firm, you must transfer to the SBA a copy of the firm's application package. You must transfer this information within thirty days of receipt of the request.
- (b) If necessary, the SBA may make a written request to the recipient for additional materials (*e.g.*, the report of the on-site review). You must provide a copy of this material to the SBA within forty-five days of the additional request.
- (c) You must provide appropriate assistance to SBA-certified firms, including providing information pertaining to the DBE application process, filing locations, required documentation and status of applications.

[68 FR 35555, June 16, 2003]

§26.86 What rules govern recipients' denials of initial requests for certification?

- (a) When you deny a request by a firm, which is not currently certified with you, to be certified as a DBE, you must provide the firm a written explanation of the reasons for the denial, specifically referencing the evidence in the record that supports each reason for the denial. All documents and other information on which the denial is based must be made available to the applicant, on request.
- (b) When you deny DBE certification to a firm certified by the SBA, you must notify the SBA in writing. The notification must include the reason for denial.
- (c) When a firm is denied certification, you must establish a time period of no more than twelve months that must elapse before the firm may reapply to the recipient for certification. You may provide, in your DBE program, subject to approval by the concerned operating administration, a shorter waiting period for reapplication. The time period for reapplication begins to run on the date the explanation required by paragraph (a) of this section is received by the firm.

(d) When you make an administratively final denial of certification concerning a firm, the firm may appeal the denial to the Department under §26.89.

[64 FR 5126, Feb. 2, 1999. Redesignated and amended at 68 FR 35555, June 16, 2003]

§26.87 What procedures does a recipient use to remove a DBE's eligibility?

(a) *Ineligibility complaints.* (1) Any person may file with you a written complaint alleging that a currently-certified firm is ineligible and specifying the alleged reasons why the firm is ineligible. You are not required to accept a general allegation that a firm is ineligible or an anonymous complaint. The complaint may include any information or arguments supporting the complainant's assertion that the firm is ineligible and should not continue to be certified. Confidentiality of complainants' identities must be protected as provided in §26.109(b).

(2) You must review your records concerning the firm, any material provided by the firm and the complainant, and other available information. You may request additional information from the firm or conduct any other investigation that you deem necessary.

(3) If you determine, based on this review, that there is reasonable cause to believe that the firm is ineligible, you must provide written notice to the firm that you propose to find the firm ineligible, setting forth the reasons for the proposed determination. If you determine that such reasonable cause does not exist, you must notify the complainant and the firm in writing of this determination and the reasons for it. All statements of reasons for findings on the issue of reasonable cause must specifically reference the evidence in the record on which each reason is based.

(b) *Recipient-initiated proceedings.* If, based on notification by the firm of a change in its circumstances or other information that comes to your attention, you determine that there is reasonable cause to believe that a currently certified firm is ineligible, you must provide written notice to the firm that you propose to find the firm ineligible, setting forth the reasons for the proposed determination. The statement of reasons for the finding of

reasonable cause must specifically reference the evidence in the record on which each reason is based.

(c) *DOT directive to initiate proceeding.* (1) If the concerned operating administration determines that information in your certification records, or other information available to the concerned operating administration, provides reasonable cause to believe that a firm you certified does not meet the eligibility criteria of this part, the concerned operating administration may direct you to initiate a proceeding to remove the firm's certification.

(2) The concerned operating administration must provide you and the firm a notice setting forth the reasons for the directive, including any relevant documentation or other information.

(3) You must immediately commence and prosecute a proceeding to remove eligibility as provided by paragraph (b) of this section.

(d) *Hearing.* When you notify a firm that there is reasonable cause to remove its eligibility, as provided in paragraph (a), (b), or (c) of this section, you must give the firm an opportunity for an informal hearing, at which the firm may respond to the reasons for the proposal to remove its eligibility in person and provide information and arguments concerning why it should remain certified.

(1) In such a proceeding, you bear the burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards of this part.

(2) You must maintain a complete record of the hearing, by any means acceptable under state law for the retention of a verbatim record of an administrative hearing. If there is an appeal to DOT under §26.89, you must provide a transcript of the hearing to DOT and, on request, to the firm. You must retain the original record of the hearing. You may charge the firm only for the cost of copying the record.

(3) The firm may elect to present information and arguments in writing, without going to a hearing. In such a situation, you bear the same burden of proving, by a

preponderance of the evidence, that the firm does not meet the certification standards, as you would during a hearing.

(e) *Separation of functions.* You must ensure that the decision in a proceeding to remove a firm's eligibility is made by an office and personnel that did not take part in actions leading to or seeking to implement the proposal to remove the firm's eligibility and are not subject, with respect to the matter, to direction from the office or personnel who did take part in these actions.

(1) Your method of implementing this requirement must be made part of your DBE program.

(2) The decisionmaker must be an individual who is knowledgeable about the certification requirements of your DBE program and this part.

(3) Before a UCP is operational in its state, a small airport or small transit authority (i.e., an airport or transit authority serving an area with less than 250,000 population) is required to meet this requirement only to the extent feasible.

(f) *Grounds for decision.* You must not base a decision to remove eligibility on a reinterpretation or changed opinion of information available to the recipient at the time of its certification of the firm. You may base such a decision only on one or more of the following:

(1) Changes in the firm's circumstances since the certification of the firm by the recipient that render the firm unable to meet the eligibility standards of this part;

(2) Information or evidence not available to you at the time the firm was certified;

(3) Information that was concealed or misrepresented by the firm in previous certification actions by a recipient;

(4) A change in the certification standards or requirements of the Department since you certified the firm; or

(5) A documented finding that your determination to certify the firm was factually erroneous.

(g) *Notice of decision.* Following your decision, you must provide the firm written notice of the decision and the reasons for it, including specific references to the evidence in the record that supports each reason for the decision. The notice must inform the firm of the consequences of your decision and of the availability of an appeal to the Department of Transportation under §26.89. You must send copies of the notice to the complainant in an ineligibility complaint or the concerned operating administration that had directed you to initiate the proceeding.

(h) When you decertify a DBE firm certified by the SBA, you must notify the SBA in writing. The notification must include the reason for denial.

(i) *Status of firm during proceeding.* (1) A firm remains an eligible DBE during the pendency of your proceeding to remove its eligibility.

(2) The firm does not become ineligible until the issuance of the notice provided for in paragraph (g) of this section.

(j) *Effects of removal of eligibility.* When you remove a firm's eligibility, you must take the following action:

(1) When a prime contractor has made a commitment to using the ineligible firm, or you have made a commitment to using a DBE prime contractor, but a subcontract or contract has not been executed before you issue the decertification notice provided for in paragraph (g) of this section, the ineligible firm does not count toward the contract goal or overall goal. You must direct the prime contractor to meet the contract goal with an eligible DBE firm or demonstrate to you that it has made a good faith effort to do so.

(2) If a prime contractor has executed a subcontract with the firm before you have notified the firm of its ineligibility, the prime contractor may continue to use the firm on the contract and may continue to receive credit toward its DBE goal for the firm's work. In this case, or in a case where you have let a prime contract to the DBE that was later

ruled ineligible, the portion of the ineligible firm's performance of the contract remaining after you issued the notice of its ineligibility shall not count toward your overall goal, but may count toward the contract goal.

(3) *Exception:* If the DBE's ineligibility is caused solely by its having exceeded the size standard during the performance of the contract, you may continue to count its participation on that contract toward overall and contract goals.

(k) *Availability of appeal.* When you make an administratively final removal of a firm's eligibility under this section, the firm may appeal the removal to the Department under §26.89.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35556, June 16, 2003]

§26.89 What is the process for certification appeals to the Department of Transportation?

(a)(1) If you are a firm that is denied certification or whose eligibility is removed by a recipient, including SBA-certified firms applying pursuant to the DOT/SBA MOU, you may make an administrative appeal to the Department.

(2) If you are a complainant in an ineligibility complaint to a recipient (including the concerned operating administration in the circumstances provided in §26.87(c)), you may appeal to the Department if the recipient does not find reasonable cause to propose removing the firm's eligibility or, following a removal of eligibility proceeding, determines that the firm is eligible.

(3) Send appeals to the following address: Department of Transportation, Office of Civil Rights, 400 7th Street, SW, Room 5414, Washington, DC 20590.

(b) Pending the Department's decision in the matter, the recipient's decision remains in effect. The Department does not stay the effect of the recipient's decision while it is considering an appeal.

(c) If you want to file an appeal, you must send a letter to the Department within 90 days of the date of the recipient's final decision, including information and arguments

concerning why the recipient's decision should be reversed. The Department may accept an appeal filed later than 90 days after the date of the decision if the Department determines that there was good cause for the late filing of the appeal.

(1) If you are an appellant who is a firm which has been denied certification, whose certification has been removed, whose owner is determined not to be a member of a designated disadvantaged group, or concerning whose owner the presumption of disadvantage has been rebutted, your letter must state the name and address of any other recipient which currently certifies the firm, which has rejected an application for certification from the firm or removed the firm's eligibility within one year prior to the date of the appeal, or before which an application for certification or a removal of eligibility is pending. Failure to provide this information may be deemed a failure to cooperate under §26.109(c).

(2) If you are an appellant other than one described in paragraph (c)(1) of this section, the Department will request, and the firm whose certification has been questioned shall promptly provide, the information called for in paragraph (c)(1) of this section. Failure to provide this information may be deemed a failure to cooperate under §26.109(c).

(d) When it receives an appeal, the Department requests a copy of the recipient's complete administrative record in the matter. If you are the recipient, you must provide the administrative record, including a hearing transcript, within 20 days of the Department's request. The Department may extend this time period on the basis of a recipient's showing of good cause. To facilitate the Department's review of a recipient's decision, you must ensure that such administrative records are well organized, indexed, and paginated. Records that do not comport with these requirements are not acceptable and will be returned to you to be corrected immediately. If an appeal is brought concerning one recipient's certification decision concerning a firm, and that recipient relied on the decision and/or administrative record of another recipient, this requirement applies to both recipients involved.

(e) The Department makes its decision based solely on the entire administrative record. The Department does not make a de novo review of the matter and does not conduct a

hearing. The Department may supplement the administrative record by adding relevant information made available by the DOT Office of Inspector General; Federal, state, or local law enforcement authorities; officials of a DOT operating administration or other appropriate DOT office; a recipient; or a firm or other private party.

(f) As a recipient, when you provide supplementary information to the Department, you shall also make this information available to the firm and any third-party complainant involved, consistent with Federal or applicable state laws concerning freedom of information and privacy. The Department makes available, on request by the firm and any third-party complainant involved, any supplementary information it receives from any source.

(1) The Department affirms your decision unless it determines, based on the entire administrative record, that your decision is unsupported by substantial evidence or inconsistent with the substantive or procedural provisions of this part concerning certification.

(2) If the Department determines, after reviewing the entire administrative record, that your decision was unsupported by substantial evidence or inconsistent with the substantive or procedural provisions of this part concerning certification, the Department reverses your decision and directs you to certify the firm or remove its eligibility, as appropriate. You must take the action directed by the Department's decision immediately upon receiving written notice of it.

(3) The Department is not required to reverse your decision if the Department determines that a procedural error did not result in fundamental unfairness to the appellant or substantially prejudice the opportunity of the appellant to present its case.

(4) If it appears that the record is incomplete or unclear with respect to matters likely to have a significant impact on the outcome of the case, the Department may remand the record to you with instructions seeking clarification or augmentation of the record before making a finding. The Department may also remand a case to you for further

proceedings consistent with Department instructions concerning the proper application of the provisions of this part.

(5) The Department does not uphold your decision based on grounds not specified in your decision.

(6) The Department's decision is based on the status and circumstances of the firm as of the date of the decision being appealed.

(7) The Department provides written notice of its decision to you, the firm, and the complainant in an ineligibility complaint. A copy of the notice is also sent to any other recipient whose administrative record or decision has been involved in the proceeding (*see* paragraph (d) of this section). The Department will also notify the SBA in writing when DOT takes an action on an appeal that results in or confirms a loss of eligibility to any SBA-certified firm. The notice includes the reasons for the Department's decision, including specific references to the evidence in the record that supports each reason for the decision.

(8) The Department's policy is to make its decision within 180 days of receiving the complete administrative record. If the Department does not make its decision within this period, the Department provides written notice to concerned parties, including a statement of the reason for the delay and a date by which the appeal decision will be made.

(g) All decisions under this section are administratively final, and are not subject to petitions for reconsideration.

[64 FR 5126, Feb. 2, 1999, as amended at 65 FR 68951, Nov. 15, 2000; 68 FR 35556, June 16, 2003]

§26.91 What actions do recipients take following DOT certification appeal decisions?

(a) If you are the recipient from whose action an appeal under §26.89 is taken, the decision is binding. It is not binding on other recipients.

(b) If you are a recipient to which a DOT determination under §26.89 is applicable, you must take the following action:

(1) If the Department determines that you erroneously certified a firm, you must remove the firm's eligibility on receipt of the determination, without further proceedings on your part. Effective on the date of your receipt of the Department's determination, the consequences of a removal of eligibility set forth in §26.87(i) take effect.

(2) If the Department determines that you erroneously failed to find reasonable cause to remove the firm's eligibility, you must expeditiously commence a proceeding to determine whether the firm's eligibility should be removed, as provided in §26.87.

(3) If the Department determines that you erroneously declined to certify or removed the eligibility of the firm, you must certify the firm, effective on the date of your receipt of the written notice of Department's determination.

(4) If the Department determines that you erroneously determined that the presumption of social and economic disadvantage either should or should not be deemed rebutted, you must take appropriate corrective action as determined by the Department.

(5) If the Department affirms your determination, no further action is necessary.

(c) Where DOT has upheld your denial of certification to or removal of eligibility from a firm, or directed the removal of a firm's eligibility, other recipients with whom the firm is certified may commence a proceeding to remove the firm's eligibility under §26.87. Such recipients must not remove the firm's eligibility absent such a proceeding. Where DOT has reversed your denial of certification to or removal of eligibility from a firm, other recipients must take the DOT action into account in any certification action involving the firm. However, other recipients are not required to certify the firm based on the DOT decision.

Subpart F -- Compliance and Enforcement

§26.101 What compliance procedures apply to recipients?

(a) If you fail to comply with any requirement of this part, you may be subject to formal enforcement action under §26.103 or §26.105 or appropriate program sanctions by the concerned operating administration, such as the suspension or termination of Federal funds, or refusal to approve projects, grants or contracts until deficiencies are remedied. Program sanctions may include, in the case of the FHWA program, actions provided for under 23 CFR 1.36; in the case of the FAA program, actions consistent with 49 U.S.C. 47106(d), 47111(d), and 47122; and in the case of the FTA program, any actions permitted under 49 U.S.C. chapter 53 or applicable FTA program requirements.

(b) As provided in statute, you will not be subject to compliance actions or sanctions for failing to carry out any requirement of this part because you have been prevented from complying because a Federal court has issued a final order in which the court found that the requirement is unconstitutional.

§26.103 What enforcement actions apply in FHWA and FTA programs?

The provisions of this section apply to enforcement actions under FHWA and FTA programs:

(a) *Noncompliance complaints.* Any person who believes that a recipient has failed to comply with its obligations under this part may file a written complaint with the concerned operating administration's Office of Civil Rights. If you want to file a complaint, you must do so no later than 180 days after the date of the alleged violation or the date on which you learned of a continuing course of conduct in violation of this part. In response to your written request, the Office of Civil Rights may extend the time for filing in the interest of justice, specifying in writing the reason for so doing. The Office of Civil Rights may protect the confidentiality of your identity as provided in §26.109(b). Complaints under this part are limited to allegations of violation of the provisions of this part.

(b) *Compliance reviews.* The concerned operating administration may review the recipient's compliance with this part at any time, including reviews of paperwork and on-

site reviews, as appropriate. The Office of Civil Rights may direct the operating administration to initiate a compliance review based on complaints received.

(c) *Reasonable cause notice.* If it appears, from the investigation of a complaint or the results of a compliance review, that you, as a recipient, are in noncompliance with this part, the appropriate DOT office promptly sends you, return receipt requested, a written notice advising you that there is reasonable cause to find you in noncompliance. The notice states the reasons for this finding and directs you to reply within 30 days concerning whether you wish to begin conciliation.

(d) *Conciliation.* (1) If you request conciliation, the appropriate DOT office shall pursue conciliation for at least 30, but not more than 120, days from the date of your request. The appropriate DOT office may extend the conciliation period for up to 30 days for good cause, consistent with applicable statutes.

(2) If you and the appropriate DOT office sign a conciliation agreement, then the matter is regarded as closed and you are regarded as being in compliance. The conciliation agreement sets forth the measures you have taken or will take to ensure compliance. While a conciliation agreement is in effect, you remain eligible for FHWA or FTA financial assistance.

(3) The concerned operating administration shall monitor your implementation of the conciliation agreement and ensure that its terms are complied with. If you fail to carry out the terms of a conciliation agreement, you are in noncompliance.

(4) If you do not request conciliation, or a conciliation agreement is not signed within the time provided in paragraph (d)(1) of this section, then enforcement proceedings begin.

(e) *Enforcement actions.* (1) Enforcement actions are taken as provided in this subpart.

(2) Applicable findings in enforcement proceedings are binding on all DOT offices.

§26.105 What enforcement actions apply in FAA programs?

(a) Compliance with all requirements of this part by airport sponsors and other recipients of FAA financial assistance is enforced through the procedures of Title 49 of the United States Code, including 49 U.S.C. 47106(d), 47111(d), and 47122, and regulations implementing them.

(b) The provisions of §26.103(b) and this section apply to enforcement actions in FAA programs.

(c) Any person who knows of a violation of this part by a recipient of FAA funds may file a complaint under 14 CFR part 16 with the Federal Aviation Administration Office of Chief Counsel.

§26.107 What enforcement actions apply to firms participating in the DBE program?

(a) If you are a firm that does not meet the eligibility criteria of subpart D of this part and that attempts to participate in a DOT-assisted program as a DBE on the basis of false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, the Department may initiate suspension or debarment proceedings against you under 49 CFR part 29.

(b) If you are a firm that, in order to meet DBE contract goals or other DBE program requirements, uses or attempts to use, on the basis of false, fraudulent or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, another firm that does not meet the eligibility criteria of subpart D of this part, the Department may initiate suspension or debarment proceedings against you under 49 CFR part 29.

(c) In a suspension or debarment proceeding brought under paragraph (a) or (b) of this section, the concerned operating administration may consider the fact that a purported DBE has been certified by a recipient. Such certification does not preclude the Department from determining that the purported DBE, or another firm that has used or attempted to use it to meet DBE goals, should be suspended or debarred.

(d) The Department may take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, against any participant in the DBE program whose conduct is subject to such action under 49 CFR part 31.

(e) The Department may refer to the Department of Justice, for prosecution under 18 U.S.C. 1001 or other applicable provisions of law, any person who makes a false or fraudulent statement in connection with participation of a DBE in any DOT-assisted program or otherwise violates applicable Federal statutes.

§26.109 What are the rules governing information, confidentiality, cooperation, and intimidation or retaliation?

(a) *Availability of records.* (1) In responding to requests for information concerning any aspect of the DBE program, the Department complies with provisions of the Federal Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a). The Department may make available to the public any information concerning the DBE program release of which is not prohibited by Federal law.

(2) Notwithstanding any provision of Federal or state law, you must not release information that may be reasonably be construed as confidential business information to any third party without the written consent of the firm that submitted the information. This includes applications for DBE certification and supporting documentation. However, you must transmit this information to DOT in any certification appeal proceeding under §26.89 in which the disadvantaged status of the individual is in question.

(b) *Confidentiality of information on complainants.* Notwithstanding the provisions of paragraph (a) of this section, the identity of complainants shall be kept confidential, at their election. If such confidentiality will hinder the investigation, proceeding or hearing, or result in a denial of appropriate administrative due process to other parties, the complainant must be advised for the purpose of waiving the privilege. Complainants are advised that, in some circumstances, failure to waive the privilege may result in the closure of the investigation or dismissal of the proceeding or hearing. FAA follows the

procedures of 14 CFR part 16 with respect to confidentiality of information in complaints.

(c) *Cooperation.* All participants in the Department's DBE program (including, but not limited to, recipients, DBE firms and applicants for DBE certification, complainants and appellants, and contractors using DBE firms to meet contract goals) are required to cooperate fully and promptly with DOT and recipient compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be a ground for appropriate action against the party involved (e.g., with respect to recipients, a finding of noncompliance; with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a contractor which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or suspension and debarment).

(d) *Intimidation and retaliation.* If you are a recipient, contractor, or any other participant in the program, you must not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by this part or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. If you violate this prohibition, you are in noncompliance with this part.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35556, June 16, 2003]

Appendix A to Part 26 -- Guidance Concerning Good Faith Efforts

I. When, as a recipient, you establish a contract goal on a DOT-assisted contract, a bidder must, in order to be responsible and/or responsive, make good faith efforts to meet the goal. The bidder can meet this requirement in either of two ways. First, the bidder can meet the goal, documenting commitments for participation by DBE firms sufficient for this purpose. Second, even if it doesn't meet the goal, the bidder can document adequate good faith efforts. This means that the bidder must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirement of this part which, by their

scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful.

II. In any situation in which you have established a contract goal, part 26 requires you to use the good faith efforts mechanism of this part. As a recipient, it is up to you to make a fair and reasonable judgment whether a bidder that did not meet the goal made adequate good faith efforts. It is important for you to consider the quality, quantity, and intensity of the different kinds of efforts that the bidder has made. The efforts employed by the bidder should be those that one could reasonably expect a bidder to take if the bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere *pro forma* efforts are not good faith efforts to meet the DBE contract requirements. We emphasize, however, that your determination concerning the sufficiency of the firm's good faith efforts is a judgment call: meeting quantitative formulas is not required.

III. The Department also strongly cautions you against requiring that a bidder meet a contract goal (i.e., obtain a specified amount of DBE participation) in order to be awarded a contract, even though the bidder makes an adequate good faith efforts showing. This rule specifically prohibits you from ignoring *bona fide* good faith efforts.

IV. The following is a list of types of actions which you should consider as part of the bidder's good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

A. Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

B. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.

C. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.

D. (1) Negotiating in good faith with interested DBEs. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of

DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.

(2) A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

E. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.

F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.

G. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

H. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

V. In determining whether a bidder has made good faith efforts, you may take into account the performance of other bidders in meeting the contract. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, you may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal, but meets or exceeds the average DBE participation obtained by other bidders, you may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts.

Appendix B to Part 26 -- Uniform Report of DBE Awards or Commitments and Payments Form

INSTRUCTIONS FOR COMPLETING THE UNIFORM REPORT OF DBE AWARDS OR COMMITMENTS AND PAYMENTS

1. Indicate the DOT Operating Administration (OA) that provides your Federal financial assistance. If assistance comes from more than one OA, use separate reporting forms for each OA. If you are an FTA recipient, indicate your Vendor Number in the space provided.
2. If you are an FAA recipient, indicate the relevant AIP Numbers covered by this report. If more than six, attach a separate sheet.
3. Specify the Federal fiscal year (i.e., October 1 – September 30) in which the covered reporting period falls.
4. State the date of submission of this report.
5. Check the appropriate box that indicates the reporting period that the data provided in this report covers. If this report is due June 1, data should cover October 1 – March 31. If this report is due December 1, data should cover April 1 – September 30. If this report is due to the FAA, data should cover the entire year.
6. Name of the recipient.
7. State your annual DBE goal(s) established for the Federal fiscal year of this report to be submitted to and approved by the relevant OA. Your Overall Goal is to be reported as well as the breakdown for specific Race Conscious and Race Neutral Goals (both of which include gender-conscious/neutral goals). The Race Conscious Goal portion should be based on programs that focus on and provide benefits only for DBEs. The use of contract goals is a primary example of a Race Conscious measure. The Race Neutral Goal portion should include programs that, while benefiting DBEs, are not solely focused on DBE firms. For example, a small business outreach program, technical assistance, and prompt payment clauses can assist a wide variety of businesses in addition to helping DBE firms.
- 8-9. The amounts in items 8(A)-9(I) should include all types of prime contracts awarded and all types of subcontracts awarded or committed, including: professional or consultant services, construction, purchase of materials or supplies, lease or purchase of equipment and any other types of services. All dollar amounts are to reflect only the Federal share of such contracts, and should be rounded to the nearest dollar.
- 8(A). Provide the total dollar amount for all prime contracts assisted with DOT funds that were awarded during this reporting period.
- 8(B). Provide the total number of all prime contracts assisted with DOT funds that were awarded during this reporting period.
- 8(C). From the total dollar amount awarded in item 8(A), provide the dollar amount awarded to certified DBEs during this reporting period.
- 8(D). From the total number of prime contracts awarded in item 8(B), specify the number awarded to certified DBEs during this reporting period.
- 8(E). From the total dollars awarded in 8(C), provide the dollar amount awarded to DBEs through the use of Race Conscious methods. See the definition of Race Conscious Goal in item 7 and the explanation of project types in item 8 to include in your calculation.
- 8(F). From the total number of prime contracts awarded in 8(D), specify the number awarded to DBEs through Race Conscious methods.
- 8(G). From the total dollar amount awarded in item 8(C), provide the dollar amount awarded to certified DBEs through the use of Race Neutral methods. See the definition of Race Neutral Goal in item 7 and the explanation of project types in item 8 to include.
- 8(H). From the total number of prime contracts awarded in 8(D), specify the number awarded to DBEs through Race Neutral methods.
- 8(I). Of all prime contracts awarded this reporting period, calculate the percentage going to DBEs. Divide the dollar amount in item 8(C) by the dollar amount in item 8(A) to derive this percentage. Round percentage to the nearest tenth.
- 9(A)-9(I). Items 9(A)-9(I) are derived in the same way as items 8(A)-8(I), except that these calculations should be based on subcontracts rather than prime contracts. Unlike prime contracts, which may only be awarded, subcontracts may be either awarded or committed.
- 10(A)-11(I). For all DBEs awarded prime contracts and awarded or committed subcontracts as indicated in 8(C)-(D) and 9(C)-(D), break the data down further by total dollar amount as well as the number of all contracts going to each ethnic group as well as to non-minority women. The "Other" category includes those DBEs who are not members of the presumptively disadvantaged groups already listed, but who are determined eligible for the DBE program on an individual basis (e.g. a Caucasian male with a disability). The TOTALS value in 10(I) should equal the sum of 8(C) plus 9(C), and similarly, the TOTALS value in 11(I) should equal the sum of 8(D) plus 9(D). Column I should only be filled out if this report is due on December 1, as indicated in item 5. The values for this column are derived by adding the values reported in column H in your first report with the values reported in this second report.
- 12(A). Provide the total number of prime contracts completed during this reporting period that had Race Conscious goals. Race Conscious contracts are those with contract goals or another Race Conscious measure.
- 12(B). Provide the total dollar value of prime contracts completed this reporting period that had Race Conscious goals.
- 12(C). Provide the total dollar amount of DBE participation on all Race Conscious prime contracts completed this reporting period that was necessary to meet the contract goals on them. This applies only to Race Conscious prime contracts.
- 12(D). Provide the actual total DBE participation in dollars on the race conscious prime contracts completed this reporting period.
- 12(E). Of all the prime contracts completed this reporting period, calculate the percentage of DBE participation. Divide the actual total dollar amount in 12(D) by the total dollar value provided in 12(B) to derive this percentage. Round to the nearest tenth.
- 13(A)-13(E). Items 13(A)-13(E) are derived in the same manner as items 12(A)-12(E), except these figures should be based on Race Neutral prime contracts (i.e. those with no race conscious measures).
- 14(A)-14(E). Calculate the totals for each column by adding the race conscious and neutral figures provided in each row above.
15. Name of the Authorized Representative preparing this form.
16. Signature of the Authorized Representative.
17. Phone number of the Authorized Representative.
18. Fax number of the Authorized Representative.

**Submit your completed report to your Regional or Division Office.

UNIFORM REPORT OF DBE AWARDS OR COMMITMENTS AND PAYMENTS											
Please refer to the instructions sheet for directions on filling out this form											
1. Submitted to (check only one):		PHWA		FAA		FTA-Vendor Number					
2. AIP Numbers (FAA Recipients Only):											
3. Federal fiscal year in which reporting period falls:		FY		4. Date This Report Submitted:							
5. Reporting Period		Report due June 1 (for period Oct. 1-Mar. 31)		Report due Dec. 1 (for period April 1-Sept. 30)							
6. Name of Recipient:		FAA Annual Report									
7. Annual DBE Goal(s):		Race Conscious Goal % Race Neutral Goal % OVERALL Goal %									
		A	B	C	D	E	F	G	H	I	
		Total Dollars	Total Number	Total to DBEs (dollars)	Total to DBEs (number)	Total to DBEs/Race Conscious (dollars)	Total to DBEs/Race Conscious (number)	Total to DBEs/Race Neutral (dollars)	Total to DBEs/Race Neutral (number)	Percentage of total dollars to DBEs	
AWARDS/COMMITMENTS MADE DURING THIS REPORTING PERIOD (Total contracts and subcontracts awarded or committed during this reporting period)											
8. Prime contracts awarded this period											
9. Subcontracts awarded/committed this period											
TOTAL											
DBE AWARDS/COMMITMENTS THIS REPORTING PERIOD-BREAKDOWN BY ETHNICITY & GENDER		A	B	C	D	E	F	G	H	I	
		Black American	Hispanic American	Native American	Subcont. Asian American	Asian-Pacific American	Non-Minority Women	Other (i.e., not of any other group listed here)	TOTALS (for this reporting period only)	Year-End TOTALS	
10. Total Number of Contracts (Prime and Sub)											
11. Total Dollar Value											
ACTUAL PAYMENTS ON CONTRACTS COMPLETED THIS REPORTING PERIOD		A	B	C	D	E					
		Number of Prime Contracts Completed	Total Dollar Value of Prime Contracts Completed	DBE Participation Needed to Meet Goal (Dollars)	Total DBE Participation (Dollars)	Percentage of Total DBE Participation					
12. Race Conscious											
13. Race Neutral											
14. Totals											
15. Submitted by (Print Name of Authorized Representative)		16. Signature of Authorized Representative									
17. Phone Number:		18. Fax Number:									

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35556, June 16, 2003]

Appendix C to Part 26 -- DBE Business Development Program Guidelines

The purpose of this program element is to further the development of DBEs, including but not limited to assisting them to move into non-traditional areas of work and/or compete in the marketplace outside the DBE program, via the provision of training and assistance from the recipient.

(A) Each firm that participates in a recipient's business development program (BDP) program is subject to a program term determined by the recipient. The term should consist of two stages; a developmental stage and a transitional stage.

(B) In order for a firm to remain eligible for program participation, it must continue to meet all eligibility criteria contained in part 26.

(C) By no later than 6 months of program entry, the participant should develop and submit to the recipient a comprehensive business plan setting forth the participant's business targets, objectives and goals. The participant will not be eligible for program benefits until such business plan is submitted and approved by the recipient. The approved business plan will constitute the participant's short and long term goals and the strategy for developmental growth to the point of economic viability in non-traditional areas of work and/or work outside the DBE program.

(D) The business plan should contain at least the following:

(1) An analysis of market potential, competitive environment and other business analyses estimating the program participant's prospects for profitable operation during the term of program participation and after graduation from the program.

(2) An analysis of the firm's strengths and weaknesses, with particular attention paid to the means of correcting any financial, managerial, technical, or labor conditions which could impede the participant from receiving contracts other than those in traditional areas of DBE participation.

(3) Specific targets, objectives, and goals for the business development of the participant during the next two years, utilizing the results of the analysis conducted pursuant to paragraphs (C) and (D)(1) of this appendix;

(4) Estimates of contract awards from the DBE program and from other sources which are needed to meet the objectives and goals for the years covered by the business plan; and

(5) Such other information as the recipient may require.

(E) Each participant should annually review its currently approved business plan with the recipient and modify the plan as may be appropriate to account for any changes in the firm's structure and redefined needs. The currently approved plan should be considered the applicable plan for all program purposes

until the recipient approves in writing a modified plan. The recipient should establish an anniversary date for review of the participant's business plan and contract forecasts.

(F) Each participant should annually forecast in writing its need for contract awards for the next program year and the succeeding program year during the review of its business plan conducted under paragraph (E) of this appendix. Such forecast should be included in the participant's business plan. The forecast should include:

- (1) The aggregate dollar value of contracts to be sought under the DBE program, reflecting compliance with the business plan;
- (2) The aggregate dollar value of contracts to be sought in areas other than traditional areas of DBE participation;
- (3) The types of contract opportunities being sought, based on the firm's primary line of business; and
- (4) Such other information as may be requested by the recipient to aid in providing effective business development assistance to the participant.

(G) Program participation is divided into two stages; (1) a developmental stage and (2) a transitional stage. The developmental stage is designed to assist participants to overcome their social and economic disadvantage by providing such assistance as may be necessary and appropriate to enable them to access relevant markets and strengthen their financial and managerial skills. The transitional stage of program participation follows the developmental stage and is designed to assist participants to overcome, insofar as practical, their social and economic disadvantage and to prepare the participant for leaving the program.

(H) The length of service in the program term should not be a pre-set time frame for either the developmental or transitional stages but should be figured on the number of years considered necessary in normal progression of achieving the firm's established goals and objectives. The setting of such time could be factored on such items as, but not limited to, the number of contracts, aggregate amount of the contract received, years in business, growth potential, etc.

(I) Beginning in the first year of the transitional stage of program participation, each participant should annually submit for inclusion in its business plan a transition management plan outlining specific steps to promote profitable business operations in areas other than traditional areas of DBE participation after graduation from the program. The transition management plan should be submitted to the recipient at the same time other modifications are submitted pursuant to the annual review under paragraph (E) of this section. The plan should set forth the same information as required under paragraph (F) of steps the participant will take to continue its business development after the expiration of its program term.

(J) When a participant is recognized as successfully completing the program by substantially achieving the targets, objectives and goals set forth in its program term, and has demonstrated the ability to compete in the marketplace, its further participation within the program may be determined by the recipient.

(K) In determining whether a concern has substantially achieved the goals and objectives of its business plan, the following factors, among others, should be considered by the recipient:

(1) Profitability;

(2) Sales, including improved ratio of non-traditional contracts to traditional-type contracts;

(3) Net worth, financial ratios, working capital, capitalization, access to credit and capital;

(4) Ability to obtain bonding;

(5) A positive comparison of the DBE's business and financial profile with profiles of non-DBE businesses in the same area or similar business category; and

(6) Good management capacity and capability.

(L) Upon determination by the recipient that the participant should be graduated from the developmental program, the recipient should notify the participant in writing of its intent to graduate the firm in a letter of notification. The letter of notification should set forth findings, based on the facts, for every material issue relating to the basis of the program graduation with specific reasons for each finding. The letter of notification should also provide the participant 45 days from the date of service of the letter to submit in writing information that would explain why the proposed basis of graduation is not warranted.

(M) Participation of a DBE firm in the program may be discontinued by the recipient prior to expiration of the firm's program term for good cause due to the failure of the firm to engage in business practices that will promote its competitiveness within a reasonable period of time as evidenced by, among other indicators, a pattern of inadequate performance or unjustified delinquent performance. Also, the recipient can discontinue the participation of a firm that does not actively pursue and bid on contracts, and a firm that, without justification, regularly fails to respond to solicitations in the type of work it is qualified for and in the geographical areas where it has indicated availability under its approved business plan. The recipient should take such action if over a 2-year period a DBE firm exhibits such a pattern.

Appendix D to Part 26 -- Mentor-Prote ge Program Guidelines

(A) The purpose of this program element is to further the development of DBEs, including but not limited to assisting them to move into non-traditional areas of work and/or compete in the marketplace outside

the DBE program, via the provision of training and assistance from other firms. To operate a mentor-protégé program, a recipient must obtain the approval of the concerned operating administration.

(B)(1) Any mentor-protégé relationship shall be based on a written development plan, approved by the recipient, which clearly sets forth the objectives of the parties and their respective roles, the duration of the arrangement and the services and resources to be provided by the mentor to the protégé. The formal mentor-protégé agreement may set a fee schedule to cover the direct and indirect cost for such services rendered by the mentor for specific training and assistance to the protégé through the life of the agreement. Services provided by the mentor may be reimbursable under the FTA, FHWA, and FAA programs.

(2) To be eligible for reimbursement, the mentor's services provided and associated costs must be directly attributable and properly allowable to specific individual contracts. The recipient may establish a line item for the mentor to quote the portion of the fee schedule expected to be provided during the life of the contract. The amount claimed shall be verified by the recipient and paid on an incremental basis representing the time the protégé is working on the contract. The total individual contract figures accumulated over the life of the agreement shall not exceed the amount stipulated in the original mentor/protégé agreement.

(C) DBEs involved in a mentor-protégé agreement must be independent business entities which meet the requirements for certification as defined in subpart D of this part. A protégé firm must be certified *before* it begins participation in a mentor-protégé arrangement. If the recipient chooses to recognize mentor/protégé agreements, it should establish formal general program guidelines. These guidelines must be submitted to the operating administration for approval prior to the recipient executing an individual contractor/ subcontractor mentor-protégé agreement.

Appendix E to Part 26 -- Individual Determinations of Social and Economic Disadvantage

The following guidance is adapted, with minor modifications, from SBA regulations concerning social and economic disadvantage determinations (see 13 CFR 124.103(c) and 124.104).

SOCIAL DISADVANTAGE

I. Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias within American society because of their identities as members of groups and without regard to their individual qualities. Social disadvantage must stem from circumstances beyond their control. Evidence of individual social disadvantage must include the following elements:

(A) At least one objective distinguishing feature that has contributed to social disadvantage, such as race, ethnic origin, gender, disability, long-term residence in an environment isolated from the mainstream of American society, or other similar causes not common to individuals who are not socially disadvantaged;

(B) Personal experiences of substantial and chronic social disadvantage in American society, not in other countries; and

(C) Negative impact on entry into or advancement in the business world because of the disadvantage. Recipients will consider any relevant evidence in assessing this element. In every case, however, recipients will consider education, employment and business history, where applicable, to see if the totality of circumstances shows disadvantage in entering into or advancing in the business world.

(1) *Education.* Recipients will consider such factors as denial of equal access to institutions of higher education and vocational training, exclusion from social and professional association with students or teachers, denial of educational honors rightfully earned, and social patterns or pressures which discouraged the individual from pursuing a professional or business education.

(2) *Employment.* Recipients will consider such factors as unequal treatment in hiring, promotions and other aspects of professional advancement, pay and fringe benefits, and other terms and conditions of employment; retaliatory or discriminatory behavior by an employer or labor union; and social patterns or pressures which have channeled the individual into non-professional or non-business fields.

(3) *Business history.* The recipient will consider such factors as unequal access to credit or capital, acquisition of credit or capital under commercially unfavorable circumstances, unequal treatment in opportunities for government contracts or other work, unequal treatment by potential customers and business associates, and exclusion from business or professional organizations.

II. With respect to paragraph I.(A) of this appendix, the Department notes that people with disabilities have disproportionately low incomes and high rates of unemployment. Many physical and attitudinal barriers remain to their full participation in education, employment, and business opportunities available to the general public. The Americans with Disabilities Act (ADA) was passed in recognition of the discrimination faced by people with disabilities. It is plausible that many individuals with disabilities -- especially persons with severe disabilities (e.g., significant mobility, vision, or hearing impairments) -- may be socially and economically disadvantaged.

III. Under the laws concerning social and economic disadvantage, people with disabilities are not a group presumed to be disadvantaged. Nevertheless, recipients should look carefully at individual showings of disadvantage by individuals with disabilities, making a case-by-case judgment about whether such an individual meets the criteria of this appendix. As public entities subject to Title II of the ADA, recipients must also ensure their DBE programs are accessible to individuals with disabilities. For example, physical barriers or the lack of application and information materials in accessible formats cannot be permitted to thwart the access of potential applicants to the certification process or other services made available to DBEs and applicants.

ECONOMIC DISADVANTAGE

(A) *General.* Economically disadvantaged individuals are socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially disadvantaged.

(B) *Submission of narrative and financial information.*

(1) Each individual claiming economic disadvantage must describe the conditions which are the basis for the claim in a narrative statement, and must submit personal financial information.

(2) [Reserved]

(C) *Factors to be considered.* In considering diminished capital and credit opportunities, recipients will examine factors relating to the personal financial condition of any individual claiming disadvantaged status, including personal income for the past two years (including bonuses and the value of company stock given in lieu of cash), personal net worth, and the fair market value of all assets, whether encumbered or not. Recipients will also consider the financial condition of the applicant compared to the financial profiles of small businesses in the same primary industry classification, or, if not available, in similar lines of business, which are not owned and controlled by socially and economically disadvantaged individuals in evaluating the individual's access to credit and capital. The financial profiles that recipients will compare include total assets, net sales, pre-tax profit, sales/working capital ratio, and net worth.

(D) *Transfers within two years.*

(1) Except as set forth in paragraph (D)(2) of this appendix, recipients will attribute to an individual claiming disadvantaged status any assets which that individual has transferred to an immediate family member, or to a trust, a beneficiary of which is an immediate family member, for less than fair market value, within two years prior to a concern's application for participation in the DBE program, unless the individual claiming disadvantaged status can demonstrate that the transfer is to or on behalf of an immediate family member for that individual's education, medical expenses, or some other form of essential support.

(2) Recipients will not attribute to an individual claiming disadvantaged status any assets transferred by that individual to an immediate family member that are consistent with the customary recognition of special occasions, such as birthdays, graduations, anniversaries, and retirements.

(3) In determining an individual's access to capital and credit, recipients may consider any assets that the individual transferred within such two-year period described by paragraph (D)(1) of this appendix that are not considered in evaluating the individual's assets and net worth (e.g., transfers to charities).

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35559, June 16, 2003]

Appendix F to Part 26 -- Uniform Certification Application Form

INSTRUCTIONS FOR COMPLETING THE DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM UNIFORM CERTIFICATION APPLICATION

NOTE: If you require additional space for any question in this application, please attach additional sheets or copies as needed, taking care to indicate on each attached sheet/copy the section and number of this application to which it refers.

Section 1: CERTIFICATION INFORMATION

A. Prior/Other Certifications

Check the appropriate box indicating for which program your firm is currently certified. If you are already certified as a DBE, indicate in the appropriate box the name of the certifying agency that has previously certified your firm, and also indicate whether your firm has undergone an onsite visit. If your firm has already undergone an onsite visit/review, indicate the most recent date of that review and the state UCP that conducted the review.

NOTE: If your firm is currently certified under the SBA's 8(a) and/or SDB programs, you may not have to complete this application. You should contact your state UCP to find out about a streamlined application process for firms that are already certified under the 8(a) and SDB programs.

B. Prior/Other Applications and Privileges

Indicate whether your firm or any of the persons listed has ever withdrawn an application for a DBE program or an SBA 8(a) or SDB program, or whether any have ever been denied certification, decertified, debarred, suspended, or had bidding privileges denied or restricted by any state or local agency or Federal entity. If your answer is yes, indicate the date of such action, identify the name of the agency, and explain fully the nature of the action in the space provided.

Section 2: GENERAL INFORMATION

A. Contact Information

- (1) State the name and title of the person who will serve as your firm's primary contact under this application.
- (2) State the legal name of your firm, as indicated in your firm's Articles of Incorporation or charter.
- (3) State the primary phone number of your firm.
- (4) State a secondary phone number, if any.
- (5) State your firm's fax number, if any.
- (6) State your firm's or your contact person's email address.
- (7) State your firm's website address, if any.
- (8) State the street address of your firm (i.e., the physical location of its offices -- not a post office box address).
- (9) State the mailing address of your firm, if it is different from your firm's street address.

B. Business Profile

- (1) In the box provided, briefly describe the primary business and professional activities in which your firm engages.
- (2) State the Federal Tax ID number of your firm as provided on your firm's filed tax returns, if you have one. This could also be the Social Security number of the owner of your firm.
- (3) State the date on which your firm was officially established, as stated in your firm's Articles of Incorporation or charter.

- (4) State the date on which you and/or each other owner took ownership of the firm.

- (5) Check the appropriate box that describes the manner in which you and each other owner acquired ownership of your firm. If you checked "Other," explain in the space provided.

- (6) Check the appropriate box that indicates whether your firm is "for profit."

NOTE: If you checked "No," then you do NOT qualify for the DBE program and therefore do not need to complete the rest of this application. The DBE program requires all participating firms be for-profit enterprises.

- (7) Check the appropriate box that describes the legal form of ownership of your firm, as indicated in your firm's Articles of Incorporation or charter. If you checked "Other," briefly explain in the space provided.

- (8) Check the appropriate box that indicates whether your firm has ever existed under different ownership, a different type of ownership, or a different name. If you checked "Yes," specify which and briefly explain the circumstances in the space provided.

- (9) Indicate in the spaces provided how many employees your firm has, specifying the number of employees who work on a full-time and part-time basis.

- (10) Specify the total gross receipts of your firm for each of the past three years, as declared in your firm's filed tax returns.

C. Relationships with Other Businesses

- (1) Check the appropriate box that indicates whether your firm is co-located at any of its business locations, or whether your firm shares a telephone number(s), a post office box, any office space, a yard, warehouse, other facilities, any equipment, or any office staff with any other business, organization, or entity of any kind. If you answered "Yes," then specify the name of the other firm(s) and briefly explain the nature of the shared facilities or other items in the space provided.

- (2) Check the appropriate box that indicates whether at present, or at any time in the past:

- (a) Your firm has been a subsidiary of any other firm;
- (b) Your firm consisted of a partnership in which one or more of the partners are other firms;
- (c) Your firm has owned any percentage of any other firm; and
- (d) Your firm has had any subsidiaries of its own.

- (3) Check the appropriate box that indicates whether any other firm has ever had an ownership interest in your firm.

- (4) If you answered "Yes" to any of the questions in (2)(a)-(d) or (3), identify the name, address and type of business for each.

D. Immediate Family Member Businesses

Check the appropriate box that indicates whether any of your immediate family members own or manage another company. An "immediate family member" is any person who is your father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, or father-in-law. If you answered "Yes," provide the name of each relative, your relationship to them, the name of the company they own or manage, the type of business, and whether they own or manage the company.

Section 3: OWNERSHIP

Identify all individuals or holding companies with any ownership interest in your firm, providing the information requested below (if your firm has more than one owner, provide completed copies of this section for each additional owner):

A. Background Information

- (1) Give the name of the owner.
- (2) State his/her title or position within your firm.
- (3) Give his/her home phone number.
- (4) State his/her home (street) address.
- (5) Check the appropriate box that indicates this owner's gender.
- (6) Check the appropriate box that indicates this owner's ethnicity (check all that apply). If you checked "Other," specify this owner's ethnic group/identity not otherwise listed.
- (7) Check the appropriate box to indicate whether this owner is a U.S. citizen.
- (8) If this owner is not a U.S. citizen, check the appropriate box that indicates whether this owner is a lawfully admitted permanent resident. If this owner is neither a U.S. citizen nor a lawfully admitted permanent resident of the U.S., then this owner is NOT eligible for certification as a DBE owner. This, however, does not necessarily disqualify your firm altogether from the DBE program if another owner is a U.S. citizen or lawfully admitted permanent resident and meets the program's other qualifying requirements.

B. Ownership Interest

- (1) State the number of years during which this owner has been an owner of your firm.
- (2) Indicate the dollar value of this owner's initial investment to acquire an ownership interest in your firm, broken down by cash, real estate, equipment, and/or other investment.
- (3) State the percentage of total ownership control of your firm that this owner possesses.
- (4) State the familial relationship of this owner to each other owner of your firm.
- (5) Indicate the number, percentage of the total, class, date acquired, and method by which this owner acquired his/her shares of stock in your firm.

- (6) Check the appropriate box that indicates whether this owner performs a management or supervisory function for any other business. If you checked "Yes," state the name of the other business and this owner's function or title held in that business.
- (7) Check the appropriate box that indicates whether this owner owns or works for any other firm(s) that has any relationship with your firm. If you checked "Yes," identify the name of the other business and this owner's function or title held in that business. Briefly describe the nature of the business relationship in the space provided.

C. Disadvantaged Status

NOTE: You only need to complete this section for each owner that is applying for DBE qualification (i.e., for each owner who is claiming to be "socially and economically disadvantaged" and whose ownership interest is to be counted toward the control and 51% ownership requirements of the DBE program)

- (1) Indicate in the space provided the total Personal Net Worth (PNW) of each owner who is applying for DBE qualification. Use the PNW calculator form at the end of this application to compute each owner's PNW.
- (2) Check the appropriate box that indicates whether any trust has ever been created for the benefit of this disadvantaged owner. If you answered "Yes," briefly explain the nature, history, purpose, and current value of the trust(s).

Section 4: CONTROL

A. Identify your firm's Officers and Board of Directors:

- (1) In the space provided, state the name, title, date of appointment, ethnicity, and gender of each officer of your firm.
- (2) In the space provided, state the name, title, date of appointment, ethnicity, and gender of each individual serving on your firm's Board of Directors.
- (3) Check the appropriate box that indicates whether any of your firm's officers and/or directors listed above perform a management or supervisory function for any other business. If you answered "Yes," identify each person by name, his/her title, the name of the other business in which s/he is involved, and his/her function performed in that other business.
- (4) Check the appropriate box that indicates whether any of your firm's officers and/or directors listed above own or work for any other firm(s) that has a relationship with your firm. If you answered "Yes," identify the name of the firm, the officer or director, and the nature of his/her business relationship with that other firm.

B. Identify your firm's management personnel (by name, title, ethnicity, and gender) who control your firm in the following areas:

- (1) Making financial decisions on your firm's behalf, including the acquisition of lines of credit, surety bonds, supplies, etc.;
 - (2) Estimating and bidding, including calculation of cost estimates, bid preparation and submission;
 - (3) Negotiating and contract execution, including participation in any of your firm's negotiations and executing contracts on your firm's behalf;
 - (4) Hiring and/or firing of management personnel, including interviewing and conducting performance evaluations;
 - (5) Field/Production operations supervision, including site supervision, scheduling, project management services, etc.;
 - (6) Office management;
 - (7) Marketing and sales;
 - (8) Purchasing of major equipment;
 - (9) Signing company checks (for any purpose); and
 - (10) Conducting any other financial transactions on your firm's behalf not otherwise listed.
 - (11) Check the appropriate box that indicates whether any of the persons listed in (1) through (10) above perform a management or supervisory function for any other business. If you answered "Yes," identify each person by name, his/her title, the name of the other business in which s/he is involved, and his/her function performed in that other business.
 - (12) Check the appropriate box that indicates whether any of the persons listed in (1) through (10) above own or work for any other firm(s) that has a relationship with your firm. If you answered "Yes," identify the name of the firm, the name of the person, and the nature of his/her business relationship with that other firm.
- C. Indicate your firm's inventory in the following categories:**
- (1) **Equipment**
State the type, make and model, and current dollar value of each piece of equipment held and/or used by your firm. Indicate whether each piece is either owned or leased by your firm.
 - (2) **Vehicles**
State the type, make and model, and current dollar value of each motor vehicle held and/or used by your firm. Indicate whether each vehicle is either owned or leased by your firm.
 - (3) **Office Space**
State the street address of each office space held and/or used by your firm. Indicate whether your firm owns or leases the office space and the current dollar value of that property or its lease.
 - (4) **Storage Space**
State the street address of each storage space held and/or used by your firm. Indicate whether your firm owns or leases the storage space and the current dollar value of that property or its lease.
- D. Does your firm rely on any other firm for management functions or employee payroll?**
Check the appropriate box that indicates whether your firm relies on any other firm for management functions or for employee payroll. If you answered
- "Yes," briefly explain the nature of that reliance and the extent to which the other firm carries out such functions.
- E. Financial Information**
- (1) **Banking Information**
 - (a) State the name of your firm's bank.
 - (b) State the main phone number of your firm's bank branch.
 - (c) State the address of your firm's bank branch.
 - (2) **Bonding Information**
 - (a) State your firm's Binder Number.
 - (b) State the name of your firm's bond agent and/or broker.
 - (c) State your agent's/broker's phone number.
 - (d) State your agent's/broker's address.
 - (e) State your firm's bonding limits (in dollars), specifying both the Aggregate and Project Limits.
- F. Identify all sources, amounts, and purposes of money loaned to your firm, including the names of persons or firms securing the loan, if other than the listed owner:**
State the name and address of each source, the name of the person securing the loan, the original dollar amount and the current balance of each loan, and the purpose for which each loan was made to your firm.
- G. List all contributions or transfers of assets to/from your firm and to/from any of its owners over the past two years:**
Indicate in the spaces provided, the type of contribution or asset that was transferred, its current dollar value, the person or firm from whom it was transferred, the person or firm to whom it was transferred, the relationship between the two persons and/or firms, and the date of the transfer.
- H. List current licenses/permits held by any owner or employee of your firm.**
List the name of each person in your firm who holds a professional license or permit, the type of license or permit, the expiration date of the permit or license, and the license/permit number and issuing State of the license or permit.
- I. List the three largest contracts completed by your firm in the past three years, if any.**
List the name of each owner or contractor for each contract, the name and location of the projects under each contract, the type of work performed on each contract, and the dollar value of each contract.
- J. List the three largest active jobs on which your firm is currently working.**
For each active job listed, state the name of the prime contractor and the project number, the location, the type of work performed, the project start date, the anticipated completion date, and the dollar value of the contract.
- AFFIDAVIT & SIGNATURE**
Carefully read the attached affidavit in its entirety. Fill in the required information for each blank space, and sign and date the affidavit in the presence of a Notary Public, who must then notarize the form.

**DISADVANTAGED BUSINESS ENTERPRISE PROGRAM
49 C.F.R. PART 26**

UNIFORM CERTIFICATION APPLICATION

ROADMAP FOR APPLICANTS

① Should I apply?

- Is your firm at least 51%-owned by a socially and economically disadvantaged individual(s) who also controls the firm?
- Is the disadvantaged owner a U.S. citizen or lawfully admitted permanent resident of the U.S.?
- Is your firm a small business that meets the Small Business Administration's (SBA's) size standard and does not exceed \$17.42 million in gross annual receipts?
- Is your firm organized as a for-profit business?

⇒ If you answered "Yes" to all of the questions above, you may be eligible to participate in the U.S. DOT DBE program.

② Is there an easier way to apply?

If you are currently certified by the SBA as an 8(a) and/or SDB firm, you may be eligible for a streamlined certification application process. Under this process, the certifying agency to which you are applying will accept your current SBA application package in lieu of requiring you to fill out and submit this form.

NOTE: You must still meet the requirements for the DBE program, including undergoing an on-site review.

③ Be sure to attach all of the required documents listed in the Documents Check List at the end of this form with your completed application.

④ Where can I find more information?

- U.S. DOT – <http://osdbuweb.dot.gov/business/dbe/index.html> (this site provides useful links to the rules and regulations governing the DBE program, questions and answers, and other pertinent information)
- SBA – <http://www.ntis.gov/naics> (provides a listing of NAICS codes) and <http://www.sba.gov/size/indexableofsize.html> (provides a listing of NAICS codes)
- 49 CFR Part 26 (the rules and regulations governing the DBE program)

Under Sec. 26.107 of 49 CFR Part 26, dated February 2, 1999, if at any time, the Department or a recipient has reason to believe that any person or firm has willfully and knowingly provided incorrect information or made false statements, the Department may initiate suspension or debarment proceedings against the person or firm under 49 CFR Part 29, Governmentwide Debarment and Suspension (nonprocurement) and Governmentwide Requirements for Drug-free Workplace (grants), take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, and/or refer the matter to the Department of Justice for criminal prosecution under 18 U.S.C. 1001, which prohibits false statements in Federal programs.

Section 1: CERTIFICATION INFORMATION

A. Prior/Other Certifications

Is your firm currently certified for any of the following programs? <i>(If Yes, check appropriate box(es))</i>	<input type="checkbox"/> DBE	Name of certifying agency:
		Has your firm's state UCP conducted an on-site visit?
		<input type="checkbox"/> Yes, on ____ / ____ / ____ State: ____ <input type="checkbox"/> No
	<input type="checkbox"/> 8(a) <input type="checkbox"/> SDB	<input checked="" type="checkbox"/> STOP! If you checked either the 8(a) or SDB box, you <u>may not</u> have to complete this application. Ask your state UCP about the streamlined application process under the SBA-DOT MOU.

B. Prior/Other Applications and Privileges

Has your firm (under any name) or any of its owners, Board of Directors, officers or management personnel, ever withdrawn an application for any of the programs listed above, or ever been denied certification, decertified, or debarred or suspended or otherwise had bidding privileges denied or restricted by any state or local agency, or Federal entity? <input type="checkbox"/> Yes, on ____ / ____ / ____ <input type="checkbox"/> No If Yes, identify State and name of state, local, or Federal agency and explain the nature of the action:	
--	--

Section 2: GENERAL INFORMATION

A. Contact Information

(1) Contact person and Title:		(2) Legal name of firm:	
(3) Phone #:	(4) Other Phone #:	(5) Fax #:	
(6) E-mail:		(7) Website <i>(if have one)</i> :	
(8) Street address of firm <i>(No P.O. Box)</i> :		City:	County/Parish: State: Zip:
(9) Mailing address of firm <i>(if different)</i> :		City:	County/Parish: State: Zip:

B. Business Profile

(1) Describe the primary activities of your firm:		(2) Federal Tax ID <i>(if any)</i> :	
(3) This firm was established on ____ / ____ / ____		(4) I/We have owned this firm since: ____ / ____ / ____	
(5) Method of acquisition <i>(check all that apply)</i> : <input type="checkbox"/> Started new business <input type="checkbox"/> Bought existing business <input type="checkbox"/> Inherited business <input type="checkbox"/> Secured concession <input type="checkbox"/> Merger or consolidation <input type="checkbox"/> Other <i>(explain)</i>			
(6) Is your firm "for profit"? <input type="checkbox"/> Yes <input type="checkbox"/> No		<input checked="" type="checkbox"/> STOP! If your firm is NOT for-profit, then you do NOT qualify for this program and do NOT need to fill out this application.	

(7) Type of firm (check all that apply):

☐ Sole Proprietorship
☐ Partnership
☐ Corporation
☐ Limited Liability Partnership
☐ Limited Liability Corporation
☐ Joint Venture
☐ Other, Describe: _____

(8) Has your firm ever existed under different ownership, a different type of ownership, or a different name?
☐ Yes ☐ No
 If Yes, explain: _____

(9) Number of employees: Full-time _____ Part-time _____ Total _____

(10) Specify the gross receipts of the firm for the last 3 years: Year _____ Total receipts \$ _____
 Year _____ Total receipts \$ _____
 Year _____ Total receipts \$ _____

C. Relationships with Other Businesses

(1) Is your firm co-located at any of its business locations, or does it share a telephone number, P.O. Box, office space, yard, warehouse, facilities, equipment, or office staff, with any other business, organization, or entity?
☐ Yes ☐ No

If Yes, identify: Other Firm's name: _____
 Explain nature of shared facilities: _____

(2) At present, or at any time in the past, has your firm:	(a) been a subsidiary of any other firm?	<input type="checkbox"/> Yes <input type="checkbox"/> No
	(b) consisted of a partnership in which one or more of the partners are other firms?	<input type="checkbox"/> Yes <input type="checkbox"/> No
	(c) owned any percentage of any other firm?	<input type="checkbox"/> Yes <input type="checkbox"/> No
	(d) had any subsidiaries?	<input type="checkbox"/> Yes <input type="checkbox"/> No

(3) Has any other firm had an ownership interest in your firm at present or at any time in the past? ☐ Yes ☐ No

(4) If you answered "Yes" to any of the questions in (2)(a)-(d) and/or (3), identify the following for each (attach extra sheets, if needed):

	Name	Address	Type of Business
1.			
2.			
3.			

D. Immediate Family Member Businesses

Do any of your immediate family members own or manage another company? ☐ Yes ☐ No

If Yes, then list (attach extra sheets, if needed):

	Name	Relationship	Company	Type of Business	Own or Manage?
1.					
2.					

Section 3: OWNERSHIP

Identify all individuals or holding companies with any ownership interest in your firm, providing the information requested below (If more than one owner, attach separate sheets for each additional owner):

A. Background Information

(1) Name:	(2) Title:	(3) Home Phone #:
(4) Home Address (street and number): City: State: Zip:		
(5) Gender: <input type="checkbox"/> Male <input type="checkbox"/> Female	(6) Ethnic group membership (Check all that apply):	
(7) U.S. Citizen: <input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Black <input type="checkbox"/> Hispanic <input type="checkbox"/> Native American <input type="checkbox"/> Asian Pacific <input type="checkbox"/> Subcontinent Asian <input type="checkbox"/> Other (specify) _____	
(8) Lawfully Admitted Permanent Resident: <input type="checkbox"/> Yes <input type="checkbox"/> No		

B. Ownership Interest

(1) Number of years as owner:	(2) Initial investment to acquire ownership interest in firm:	Type	Dollar Value
(3) Percentage owned:		Cash	\$
(4) Familial relationship to other owners:		Real Estate	\$
		Equipment	\$
		Other	\$
(5) Shares of Stock: Number Percentage Class Date acquired Method Acquired			
(6) Does this owner perform a management or supervisory function for any other business? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, identify: Name of Business: Function/Title:			
(7) Does this owner own or work for any other firm(s) that has a relationship with this firm (e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.)? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, identify: Name of Business: Function/Title: Nature of Business Relationship:			

C. Disadvantaged Status – NOTE: Complete this section only for each owner applying for DBE qualification (i.e., for each owner claiming to be socially and economically disadvantaged)

(1) What is the Personal Net Worth (PNW) of the owner(s) applying for DBE qualification? (Use and attach the Personal Net Worth calculator form at the end of this application; attach additional sheets if more than one owner is applying)
(2) Has any trust been created for the benefit of this disadvantaged owner(s)? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, explain (attach additional sheets if needed):

Section 4: CONTROL

A. Identify your firm's Officers & Board of Directors (If additional space is required, attach a separate sheet):

	Name	Title	Date Appointed	Ethnicity	Gender
(1) Officers of the Company	(a)				
	(b)				
	(c)				
	(d)				
	(e)				
(2) Board of Directors	(a)				
	(b)				
	(c)				
	(d)				
	(e)				

(3) Do any of the persons listed in (1) and/or (2) above perform a management or supervisory function for any other business? ☐ Yes ☐ No

If Yes, identify for each: Person: _____ Title: _____
Business: _____ Function: _____

(4) Do any of the persons listed (1) and/or (2) above own or work for any other firm(s) that has a relationship with this firm (e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.)? ☐ Yes ☐ No

If Yes, identify for each: Firm Name: _____ Person: _____
Nature of Business Relationship: _____

B. Identify your firm's management personnel who control your firm in the following areas (If more than two persons, attach a separate sheet):

	Name	Title	Ethnicity	Gender
(1) Financial Decisions (responsibility for acquisition of lines of credit, surety bonding, supplies, etc.)	a.			
	b.			
(2) Estimating and bidding	a.			
	b.			
(3) Negotiating and Contract Execution	a.			
	b.			
(4) Hiring/firing of management personnel	a.			
	b.			
(5) Field/Production Operations Supervisor	a.			
	b.			
(6) Office management	a.			
	b.			
(7) Marketing/Sales	a.			
	b.			
(8) Purchasing of major equipment	a.			
	b.			
(9) Authorized to Sign Company Checks (for any purpose)	a.			
	b.			
(10) Authorized to make Financial Transactions	a.			
	b.			

(11) Do any of the persons listed in (1) through (10) above perform a management or supervisory function for any other business? ☐ Yes ☐ No
 If Yes, identify for each: Person: _____ Title: _____
 Business: _____ Function: _____

(12) Do any of the persons listed in (1) through (10) above own or work for any other firm(s) that has a relationship with this firm (e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.)?
☐ Yes ☐ No

If Yes, identify for each: Firm Name: _____ Person: _____
 Nature of Business Relationship: _____

C. Indicate your firm's inventory in the following categories (attach additional sheets if needed):

(1) Equipment

Type of Equipment	Make/Model	Current Value	Owned or Leased?
(a)			
(b)			
(c)			

(2) Vehicles

Type of Vehicle	Make/Model	Current Value	Owned or Leased?
(a)			
(b)			
(c)			

(3) Office Space

Street Address	Owned or Leased?	Current Value of Property or Lease
(a)		
(b)		

(4) Storage Space

Street Address	Owned or Leased?	Current Value of Property or Lease
(a)		
(b)		

D. Does your firm rely on any other firm for management functions or employee payroll? ☐ Yes ☐ No

If Yes, explain:

E. Financial Information

(1) Banking Information:

(a) Name of bank: _____ (b) Phone No: () _____
 (c) Address of bank: _____ City: _____ State: _____ Zip: _____

(2) **Bonding Information:** If you have bonding capacity, identify: (a) Binder No: _____
 (b) Name of agent/broker _____ (c) Phone No: () _____
 (d) Address of agent/broker: _____ City: _____ State: _____ Zip: _____
 (e) Bonding limit: Aggregate limit \$ _____ Project limit \$ _____

F. Identify all sources, amounts, and purposes of money loaned to your firm, including the names of any persons or firms securing the loan, if other than the listed owner:

Name of Source	Address of Source	Name of Person Securing the Loan	Original Amount	Current Balance	Purpose of Loan
1.					
2.					
3.					

G. List all contributions or transfers of assets to/from your firm and to/from any of its owners over the past two years (attach additional sheets if needed):

Contribution/Asset	Dollar Value	From Whom Transferred	To Whom Transferred	Relationship	Date of Transfer
1.					
2.					
3.					

H. List current licenses/permits held by any owner and/or employee of your firm (e.g., contractor, engineer, architect, etc.) (attach additional sheets if needed):

Name of License/Permit Holder	Type of License/Permit	Expiration Date	License Number and State
1.			
2.			
3.			

I. List the three largest contracts completed by your firm in the past three years, if any:

Name of Owner/Contractor	Name/Location of Project	Type of Work Performed	Dollar Value of Contract
1.			
2.			
3.			

J. List the three largest active jobs on which your firm is currently working:

Name of Prime Contractor and Project Number	Location of Project	Type of Work	Project Start Date	Anticipated Completion Date	Dollar Value of Contract
1.					
2.					
3.					

DBE UNIFORM CERTIFICATION APPLICATION SUPPORTING DOCUMENTS CHECKLIST

In order to complete your application for DBE certification, you must attach copies of all of the following documents as they apply to you and your firm.

All Applicants

- ☐ Work experience resumes (include places of ownership/employment with corresponding dates), for all owners and officers of your firm
- ☐ Personal Financial Statement (form available with this application)
- ☐ Personal tax returns for the past three years, if applicable, for each owner claiming disadvantaged status
- ☐ Your firm's tax returns (gross receipts) and all related schedules for the past three years
- ☐ Documented proof of contributions used to acquire ownership for each owner (e.g., both sides of cancelled checks)
- ☐ Your firm's signed loan agreements, security agreements, and bonding forms
- ☐ Descriptions of all real estate (including office/storage space, etc.) owned/leased by your firm and documented proof of ownership/signed leases
- ☐ List of equipment leased and signed lease agreements
- ☐ List of construction equipment and/or vehicles owned and titles/proof of ownership
- ☐ Documented proof of any transfers of assets to/from your firm and/or to/from any of its owners over the past two years
- ☐ Year-end balance sheets and income statements for the past three years (or life of firm, if less than three years); a new business must provide a current balance sheet
- ☐ All relevant licenses, license renewal forms, permits, and haul authority forms
- ☐ DBE and SBA 8(a) or SDB certifications, denials, and/or decertifications, if applicable
- ☐ Bank authorization and signatory cards
- ☐ Schedule of salaries (or other compensation or remuneration) paid to all officers, managers, owners, and/or directors of the firm
- ☐ Trust agreements held by any owner claiming disadvantaged status, if any

Partnership or Joint Venture

- ☐ Original and any amended Partnership or Joint Venture Agreements

Corporation or LLC

- ☐ Official Articles of Incorporation (signed by the state official)
- ☐ Both sides of all corporate stock certificates and your firm's stock transfer ledger
- ☐ Shareholders' Agreement
- ☐ Minutes of all stockholders and board of directors meetings
- ☐ Corporate by-laws and any amendments
- ☐ Corporate bank resolution and bank signature cards
- ☐ Official Certificate of Formation and Operating Agreement with any amendments (for LLCs)

Trucking Company

- ☐ Documented proof of ownership of the company
- ☐ Insurance agreements for each truck owned or operated by your firm
- ☐ Title(s) and registration certificate(s) for each truck owned or operated by your firm
- ☐ List of U.S. DOT numbers for each truck owned or operated by your firm

Regular Dealer

- ☐ Proof of warehouse ownership or lease
- ☐ List of product lines carried
- ☐ List of distribution equipment owned and/or leased

NOTE: The specific state UCP to which you are applying may have additional required documents that you must also supply with your application. Contact the appropriate certifying agency to which you are applying to find out if more is required.

AFFIDAVIT OF CERTIFICATION

This form must be signed and notarized for each owner upon which disadvantaged status is relied.

A MATERIAL OR FALSE STATEMENT OR OMISSION MADE IN CONNECTION WITH THIS APPLICATION IS SUFFICIENT CAUSE FOR DENIAL OF CERTIFICATION, REVOCATION OF A PRIOR APPROVAL, INITIATION OF SUSPENSION OR DEBARMENT PROCEEDINGS, AND MAY SUBJECT THE PERSON AND/OR ENTITY MAKING THE FALSE STATEMENT TO ANY AND ALL CIVIL AND CRIMINAL PENALTIES AVAILABLE PURSUANT TO APPLICABLE FEDERAL AND STATE LAW.

I _____ (full name printed), swear or affirm under penalty of law that I am _____ (title) of applicant firm _____ (firm name) and that I have read and understood all of the questions in this application and that all of the foregoing information and statements submitted in this application and its attachments and supporting documents are true and correct to the best of my knowledge, and that all responses to the questions are full and complete, omitting no material information. The responses include all material information necessary to fully and accurately identify and explain the operations, capabilities and pertinent history of the named firm as well as the ownership, control, and affiliations thereof.

I recognize that the information submitted in this application is for the purpose of inducing certification approval by a government agency. I understand that a government agency may, by means it deems appropriate, determine the accuracy and truth of the statements in the application, and I authorize such agency to contact any entity named in the application, and the named firm's bonding companies, banking institutions, credit agencies, contractors, clients, and other certifying agencies for the purpose of verifying the information supplied and determining the named firm's eligibility.

I agree to submit to government audit, examination and review of books, records, documents and files, in whatever form they exist, of the named firm and its affiliates, inspection of its place(s) of business and equipment, and to permit interviews of its principals, agents, and employees. I understand that refusal to permit such inquiries shall be grounds for denial of certification.

If awarded a contract or subcontract, I agree to promptly and directly provide the prime contractor, if any, and the Department, recipient agency, or federal funding agency on an ongoing basis, current, complete and accurate information regarding (1) work performed on the project; (2) payments; and (3) proposed changes, if any, to the foregoing arrangements.

I agree to provide written notice to the recipient agency or Unified Certification Program (UCP) of any material change in the information contained in the original application within 30 calendar days of such change (e.g., ownership, address, telephone number, etc.).

I acknowledge and agree that any misrepresentations in this application or in records pertaining to a contract or subcontract will be grounds for terminating any contract or subcontract which may be awarded; denial or revocation of certification; suspension and debarment; and for initiating action under federal and/or state law concerning false statement, fraud or other applicable offenses.

I certify that I am a socially and economically disadvantaged individual who is an owner of the above-referenced firm seeking certification as a Disadvantaged Business Enterprise (DBE). In support of my application, I certify that I am a member of one or more of the following groups, and that I have held myself out as a member of the group(s) (circle all that apply):

Female Black American Hispanic American
Native American Asian- Pacific American
Subcontinent Asian American
Other (specify) _____

I certify that I am socially disadvantaged because I have been subjected to racial or ethnic prejudice or cultural bias, or have suffered the effects of discrimination, because of my identity as a member of one or more of the groups identified above, without regard to my individual qualities.

I further certify that my personal net worth does not exceed \$750,000, and that I am economically disadvantaged because my ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially and economically disadvantaged.

I declare under penalty of perjury that the information provided in this application and supporting documents is true and correct.

Executed on _____ (Date)

Signature _____
(DBE Applicant)

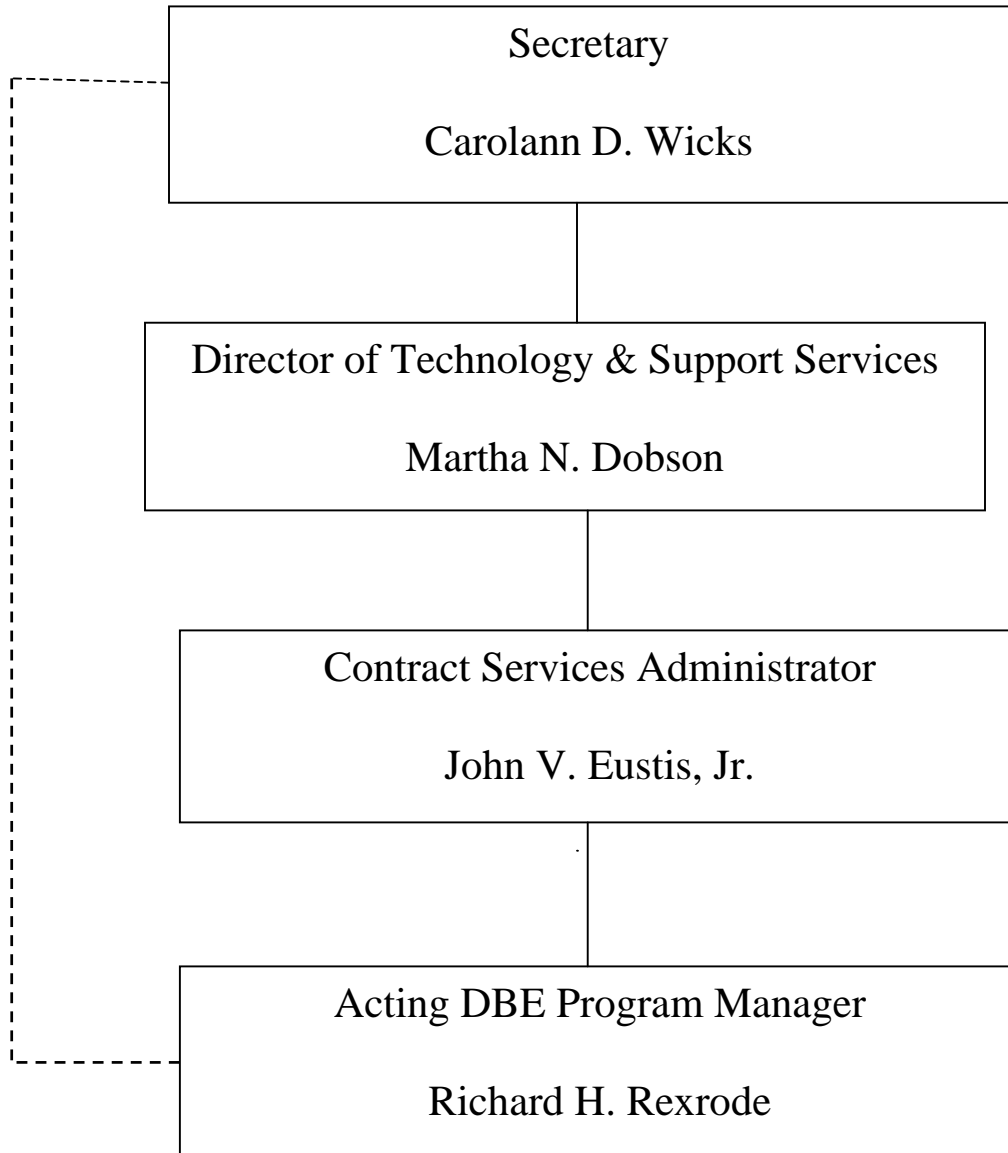
NOTARY CERTIFICATE

Attachment B

Organization Chart

Delaware

Department of Transportation



Attachment C

**DISADVANTAGED BUSINESS
ENTERPRISE PROGRAM**

Unified Directory of Certified DBE Firms

Unified Directory of Certified DBE Firms

HARDCOPY AVAILABLE UPON REQUEST

CONTACT:

Anna Isip

DBE Administrative Assistant

(302) 760-2035

Email: anna.isip@state.de.us

OR

LOG ON TO:

www.deldot.gov/static/business/dbe/dbe_directory.pdf

Attachment D

Mentor/Protégé Program

DELAWARE DEPARTMENT OF TRANSPORTATION
Mentor/Protégé Program

Introduction

The goals established for the Disadvantaged Business Enterprise (DBE) Program are as a result of the implementation of the Federal Highway Administration (FHWA) guidelines contained in Title 49 CFR, Part 26. In response to the mandate of FHWA outlined above, the Delaware Department of Transportation (DelDOT) proceeded to implement a plan to meet the overall goals and objectives of both the FHWA and DelDOT; these were to increase minority participation in highway construction in Delaware and to assist minority firms in becoming full participants in highway construction projects. Ideally, this program produces a continuous flow of minority firms that enter the Delaware DBE program, receive guidance and assistance, and graduate to prime contractor status. Since Federal funds are a major source of funding for highway construction in Delaware, and Delaware is experiencing a high degree of economic growth, the demand for new and rehabilitated road systems is at an all time high.

In the interest of answering the demand for more qualified DBE firms and providing reliable advice to new DBE firms, DelDOT supports a widely accepted practice in construction known as the Mentor/Protégé concept. The following is intended to outline the major points of the DelDOT Mentor/Protégé Program (DelDOT M/P).

I. DEFINITIONS

- A. Mentor - In the context of this program, a mentor is a contractor acting in a position of trust; guiding, advising, and counseling a DBE firm needing such assistance to successfully pursue highway construction work in Delaware and to meet the goals for DBE firms established by DelDOT in awarding contracts for said work.
- B. Protégé - A firm receiving guidance and assistance needed to further its expertise and experience in accomplishing specific goals.
 - 1. Existing Firms - A firm, which is presently listed as a certified DBE in DelDOT's Program.
 - 2. New Firms - A firm not presently listed on the DelDOT Certified DBE List that may enter into a Mentor/Protégé agreement provided it first applies for and receives certification as a DBE from the DelDOT DBE Office.

II. DELDOT MENTOR/PROTÉGÉ PROGRAM PARAMETERS

- A. This program could possibly produce a de facto exclusive-use result by the mentor firm of an established protégé firm for the duration of a contract or a series of contracts, provided the following sequence of events are detailed. First, an

approved operating plan and schedule is to be submitted detailing the training and assistance to be provided and the goals to be achieved. Such items could conceivably be an expansion of a protégé's capital base, increased bonding capacity, additional equipment, and/or expansion of a work force. Such a plan should offer dates or time frames in which the objectives are to be attained. In all cases, it should be understood by all parties that DelDOT approval is singular and should not be construed as legal sufficiency with respect to other laws and statutes of the State of Delaware as may apply.

1. During the lifetime of the agreement, it should not preclude either party from bidding with, soliciting bids from, or entering into contractual agreements with other parties should these actions be beneficial to either party.
2. Protégé firms may have mentor agreements with more than one firm provided that all mentor firms are notified in writing of each subsequent agreement after the initial agreement. When more than one M/P plan is considered for a DBE firm, DelDOT will require that all mentor firms acknowledge the existence of other plans involving the protégé and explain how they will cooperate in assisting the protégé firm in attaining its goals and objectives; thus assuring DelDOT that no conflict of interest will impede the successful completion of all M/P plans by the protégé firm.
3. Mentor firms may enter into more than one agreement with protégé firms as its ability to-provide assistance allows.
4. Any DelDOT M/P plan must be reviewed on an annual basis on the anniversary date of its inception or as close to that date as is practical in scheduling procedures. This process will require an on-site review with each party to the agreement and a written assessment on the accomplishments and is to be signed by both parties.

III. OVERALL ROLE OF THE DELDOT DBE OFFICE

- A. All contractual agreements' and associated documentation concerning the DelDOT M/P agreement shall be reviewed and approved by the DBE Office of DelDOT. Responsibility for this review belongs to' the DBE Liaison Officer. Every M/P agreement shall be submitted to the DelDOT DBE Office. This office will either approve the M/P agreement or issue disapproval with reasons and, if applicable, suggest methods for improvement. The DelDOT DBE Office will monitor all aspects of a M/P program. The FHWA has the right to monitor all activities of the DelDOT M/P Program.
- B. The DelDOT DBE Office reserves the right, upon investigation of a problem, to take appropriate action against the mentor, the protégé, or both. With respect to the protégé, this could result in decertification as a DBE, as well as debarment. On the

part of the mentor, the result could be debarment. Any decertification or debarment shall be in accordance with DelDOT procedures and/or regulations.

- C. Additionally, all modifications, deletions, or additions to the aforementioned documents must be reviewed and approved by the DBE Liaison Officer. Any and all agreements shall be construed as to represent the entirety of the agreement and that any verbal agreements or non-written agreements shall have no effect or standing with respect to the recognized written agreement in place and approved by the DelDOT DBE Office.
- D. Any and all invoices, payrolls, bills, and other such financial records involved in the training and assistance provisions and the day-to-day progression of the agreement are to be available for audit by DelDOT at any time upon receipt of notice that such an audit is desired. Five (5) working days shall be considered sufficient notification for said audit. Once a year, on or about the anniversary date of the original agreement, all records referred to above are to be available for a scheduled annual review in which the progress of the protégé firm will be discussed and reviewed by DelDOT's DBE office.
- E. Request for a modification of the original agreement may be made at the review date (anniversary). Either party, in writing to the DBE Office of DelDOT, which shall review the request, may make special request for modification. In addition, any modification of an original document must adhere to the stated goals and objectives used to approve any agreement proposed under the DelDOT M/P Plan.
- F. Failure to substantially attain the stated goals and/or follow established schedules and guidelines, which are contrary to the agreement, might result in the loss of goals credits for the contracts involved and trigger appropriate warranted sanctions.
- G. Completion and termination of an agreement shall not in and of itself preclude the former mentor and protégé firms from entering into subcontracting agreements providing that the subcontract agreement is devoid of any special provisions, in which the protégé would not provide competitive bids to other bidders for the contemplated work.

IV. BASIC ELEMENTS OF THE DELDOTM/P PROGRAM

- A. Any plan submitted to the DelDOT DBE office for approval must contain the following elements:
 - 1. Any protégé candidate must be a certified DBE firm before it can enter into a DelDOT M/P agreement.
 - 2. Parties to an M/P agreement must put their agreement in writing. The agreement will be either on a form developed and approved by DelDOT or on a form submitted by the mentor and protégé which will be reviewed and approved by the DelDOT DBE Office on an individual basis.

- B. Although written agreements will contain different conditions, all agreements must provide that either party has the right to terminate the agreement at any time upon giving ten (10) days written notice. The following are cause for termination of a M/P agreement:
1. The DBE firm has reached a self-sufficient level to compete without the special treatment or conditions provided for in its M/P agreement and so notifies the Mentor and DelDOT's DBE office in writing.
 2. The protégé firm no longer meets eligibility standards for certification as a DBE.
 3. Either party has failed or is unable to meet the terms of its M/P agreement.
 4. After review by DelDOT's DBE office it is determined by the DBE Program Manager that the DBE firm is not progressing in accordance with the M/P agreement.
 5. Upon legal advice the M/P agreement or any provisions there of is considered contrary to the requirement of federal, state, or local laws or regulations, or otherwise not compatible to public policy.
 6. The death or incapacity of a key person or other significant change in the organizations structure has made it undesirable to continue with the M/P agreement. This is subject to the exception that there may be no termination during the course of performance of a contract that is *being* performed during a M/P agreement without prior written consent from the DelDOT DBE Office.
- C. Each party to the agreement and the DelDOT DBE Office shall retain a copy of the agreement. One copy shall be sent to FHA's Division Office.
- D. Each agreement shall have a definite term in duration. It shall, additionally, specify and limit the types of assistance and shall have measurable benchmarks of achievement. These achievements will lead to the eventual severance of the M/P agreement.

V. ASSISTANCE:

- A. These guidelines will focus on four areas of assistance: financial, technical and management, equipment, and personnel.
1. Financial
 - a. Financial assistance is not uncommon in many relationships and this holds true for a M/P arrangement. The various comments on the M/P relationship have noted that one of the more common types of financial assistance to be provided by the mentor to the protégé is

working capital. Standard business practices should be utilized, except when inconsistent with federal or state regulations, guidelines, or statutes. This is especially important when examining the conditions by which the protégé will be bound in terms of assurance of payment. There appear to be several methods by which a protégé can provide such assurance of payment without violating the integrity of the DBE(s) certification.

- b. One such arrangement may be utilization of a time note. The mentor would provide working capital either in a lump sum or on an open-ended direct payment basis to the protégé. Repayment would be set on a periodic basis with a definite repayment schedule. It is important in the issuance of a note to establish that the protégé will eventually have to repay the mentor. Demand notes shall not be acceptable.
- c. Another assurance of payment may involve mortgage of property by the protégé in favor of the mentor. It is anticipated that this form of assurance would operate in a manner similar to the normal mortgage process. If a mortgage is used, the DelDOT DBE office must approve the document and there must be satisfactory evidence of recordation.
- d. Other forms of financial assistance may be used on a contract-by-contract basis. For example, a M/P agreement may provide for advanced payment by the mentor to the protégé on a particular subcontract. Such a payment must be conditioned on the protégé actually performing the necessary work.
- e. Further, the M/P agreement could provide for payments by the mentor jointly to the protégé and a third party. Any such arrangement must have the prior written approval of the Department and any payments pursuant to such an arrangement must be well documented to facilitate tracing of funds for project goal purposes. An agreement may also provide for the use of a bank or accountant as an agent to receive progress payments from the mentor to the protégé.
- f. Under current Delaware law, Title 29 Del Code; Chapter 69; Subsection 6962, a prime contractor must provide a performance and payment bond in the amount of 100 percent of the contract price. Prime contractors may elect to require bonds from their various subcontractors. During the initial period of the M/P relationship, the mentor may elect to waive the bonding requirements for a protégé on a particular subcontract or on a particular group of subcontracts. In the alternative, the mentor and protégé may agree in writing that the protégé will be responsible

for the costs of bonding but that the mentor will initially bear the costs, or proportionate costs, of the bonds. It necessarily follows under this type of arrangement that the protégé must eventually repay to the mentor the protégé's proportionate share of bond costs actually incurred by the mentor. The mentor and protégé may also include, as part of their relationship, a condition that the mentor will act as guarantor of bonds required to be obtained by the protégé. This may be done only on a limited basis. It should be noted that this type of arrangement leaves open to question the independence of a protégé since there is a third-party guarantor with a vital interest in any subcontract.

2. Technical and Management

- a. Successful contractors have played an active role in the development of newly formed small subcontractors by offering technical and management assistance. This same concept properly limited and properly utilized can be applied to the mentor-protégé relationship. Technical and management assistance may cover a wide range of activities, including day-to-day guidance as well as long-term guidance for business planning.
 - i. There are numerous areas where technical and management assistance can be given by the mentor to the protégé. The following list is not intended to be all-inclusive. It does, however, include the important areas where assistance can be vital to the successful continuance of a protégé.
 - i. Making protégé aware of, and assisting in compliance with, applicable laws, regulations and rules;
 - ii. Guidance in the interpretation of plans and specifications and subsequent bidding, estimating and pricing;
 - iii. Assisting in contracts with DelDOT;
 - iv. Guidance and/or implementation of procedures for budgeting, projecting cash flow, bookkeeping and accounting, and general money management;
 - v. Assistance in obtaining insurance, bonding, and other general business needs.
 - vi. Assistance and guidance on project-related matters.

- vii. Assistance and guidance on project-related matters, such as project management, field supervision, on-the-job training and safety; and
 - viii. Assistance in pre-qualification matters.
- b. No useful purpose can be served by attempting to provide a detailed explanation of acceptance and unacceptable activities within each of the above areas of technical assistance. However, no M/P agreement will be viewed as acceptable without adherence to certain basic requirements. First, despite what may be a substantial level of involvement by a mentor, the protégé must, at all times, retain the final decision-making responsibility. Second and somewhat related, is the requirement that the protégé at no time must lose the level of actual *independent* control, which would render its status suspect as a certified DBE. Third, although the Department feels the most of the above areas of assistance, certain types of assistance will justify a charge.

3. Equipment

- a. Rarely is there an occasion in highway construction when there is no requirement for equipment. Well-established contractors, from time to time, are faced with the decision of whether to buy equipment or whether to rent it for particular projects or specific periods of time. This dilemma is no different for a DBE. A M/P agreement may provide for guidance by the mentor on questions of purchase versus lease. Further, it will be deemed acceptable for a protégé to lease equipment from the mentor provided that such leasing is done pursuant to a valid written agreement and, further, provided that payments pursuant to that agreement are actually made by the protégé.
- b. Any M/P agreement shall provide that if the protégé can lease a piece of equipment from a third-party under more beneficial circumstances, it shall have that right. Conversely, the protégé must be able to demonstrate to the DelDOT that leasing from the mentor is in the best business interest of the protégé for a particular project. DelDOT must review the lease agreement. It is not part of the M/P agreement; although, it should be referenced in the development plan.

4. Personnel

- a. Certain circumstances warrant that a protégé may be better able to complete a particular subcontract employing personnel provided by the mentor. This is expected to occur only in limited instances, and

the personnel should be those with a highly specialized area of expertise. The fact that this lending of personnel is to be done in limited instances should serve notice that a long-term, continual, or repetitive practice of this nature is not permitted.

b. Certain rules shall be followed:

- i. Lending of personnel must have advance written approval from the Department on each project.
- ii. Lending of personnel must be limited to workers with special expertise.
- iii. When circumstances dictate that personnel from the mentor be provided to the protégé, those personnel must be under the direct supervision of the protégé and must be on the protégé's payroll. Absence of these personnel on the protégé's payroll will preclude crediting the value of labor to the DBE goals.
- iv. Involvement of mentor personnel must not be so great as to result in concern about whether the DBE firm is actually controlling the work.

Attachment E

Title 17, Delaware Code, Chapter 8

TITLE 17
Highways

CHAPTER 8. HIGHWAY CONSTRUCTION PAYMENTS

§ 801. Definitions.

As used in this chapter:

(1) "Contractor" includes, but is not limited to, an architect, engineer, nursery worker, landscaper, subcontractor or any other person who enters into any contract with the Department of Transportation, its agents or authorized employees for the erection, construction, completion, authorization or repair of any highway, right-of-way, turnpike or toll express highway, including shoulders, median strips, parkways and islands, by such contractor.

(2) "Moneys or funds" includes, but is not limited to, the entire amount of all moneys or funds received by a contractor, as defined in this section, in connection with a contract with the Department of Transportation for the erection, construction, completion, authorization or repair of any highway, right-of-way, turnpike or toll express highway, including shoulders, median strips, parkways and islands, by such contractor, and moneys or funds by way of a loan or advance for the purpose of such erection, construction, completion, authorization or repair of any highway, right-of-way, turnpike or toll express highway, including shoulders, median strips, parkways and islands, by such contractor. (17 Del. C. 1953, § 801; 57 Del. Laws, c. 688; 60 Del. Laws, c. 503, § 18; 70 Del. Laws, c. 186, § 1.)

§ 802. Payments to contractor impressed with trust.

All moneys or funds received by a contractor in connection with the erection, construction, completion, authorization or repair of any highway, right-of-way, turnpike or toll express highway, including shoulders, median strips, parkways and islands, by such contractor shall be trust funds in the hands of the contractor. (17 Del. C. 1953, § 802; 57 Del. Laws, c. 688.)

§ 803. Use or application of money received by contractor.

(a) No contractor, or agent of a contractor, shall pay out, use or appropriate any money or funds described in § 802 of this title until they have first been applied to the payment of the full amount of all moneys due and owing by the contractor to all persons furnishing labor or material for the erection, construction, completion, authorization or repair of any highway, right-of-way, turnpike or toll express highways, including shoulders, median strips, parkways and islands, by such contractor, whether or not the labor or material entered into or became a component part of any such highway right-of-way, turnpike or toll express highways, including shoulders, median strips, parkways and islands, and whether or not the same were furnished on the credit of such highway right-of-way, turnpike or toll express highways, including shoulders, median strips, parkways and islands, or on the credit of such contractor.

(b) All general contractors or agents of any general contractor receiving funds impressed with a trust under this chapter shall, within 30 days of receipt of any payment, file a statement in a form to be determined by the Division of Highways, with the contracting state agency that the contractor or the contractor's agent has paid all subcontractors furnishing labor or material the full sum due them at that stage of the contract, except any funds withheld under the terms of the contract.

(c) In any instance where the contract stipulates that the general contractor will receive a series of prorated payments the general contractor or the general contractor's agents shall, upon the receipt of each payment, pay all subcontractors furnishing labor or materials, who have properly completed all work required of them at that stage of the contract, according to the same prorated formula which governs payments to the general contractor, i.e., if the general contractor receives 10% initially, persons furnishing labor and materials will receive 10% initially, and so through the course of the contract. (17 Del. C. 1953, § 803; 57 Del. Laws, c. 688; 59 Del. Laws, c. 174, § 1; 70 Del. Laws, c. 186, § 1.)

§ 804. Contractor's failure to use or apply money in accordance with § 803 of this title.

(a) Failure of a contractor, or an agent of a contractor, to pay or cause to be paid, in full or pro rata, the lawful claims of all persons, firms, associations of persons or corporations furnishing labor or material as required by § 803 of this title within 30 days

after the receipt of any moneys or funds for the purposes of § 802 of this title shall be prima facie evidence of the payment, use or appropriation of such trust moneys or funds by the contractor in violation of this chapter.

(b) Prior to any payment made to any subcontractors for materials, workmanship and all other supplies furnished by such person, persons or corporations an inspection shall be made by the Department of Transportation of all supplies and work furnished by the subcontractors and their approval of the work shall be required before payment is made. (17 Del. C. 1953, § 804; 57 Del. Laws, c. 688; 60 Del. Laws, c. 503, § 18.)

§ 805. Penalties.

Whoever, being a contractor, or any agent of a contractor, pays out, uses or appropriates, or consents to the paying out, use or appropriation of any moneys or funds received for any of the purposes specified in § 802 of this title, prior to paying in full or pro rata to the extent of the moneys or funds so received all the lawful claims of all persons furnishing labor or materials, as prescribed by § 803 of this title, shall be fined not more than \$1,000 or imprisoned not more than 3 years or both. (17 Del. C. 1953, § 805; 57 Del. Laws, c. 688.)

NOTICE: The Delaware Code appearing on this site was prepared by the Division of Research of Legislative Council of the General Assembly with the assistance of the Government Information Center, under the supervision of the Delaware Code Revisors and the editorial staff of LexisNexis, includes all acts up to and including 75 Del. Laws, c. 222, effective September 6, 2005.

DISCLAIMER: Please Note: With respect to the Delaware Code documents available from this site or server, neither the State of Delaware nor any of its employees, makes any warranty, express or implied, including the warranties of merchantability and fitness for a particular purpose, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately-owned rights. This information is provided for informational purposes only. Please seek legal counsel for help on interpretation of individual statutes.

Attachment F

Unified Certification Application

Attachment F: Uniform Certification Application

DELAWARE DEPARTMENT OF TRANSPORTATION

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM **49 C.F.R. PART 26**



UNIFORM CERTIFICATION APPLICATION FOR:

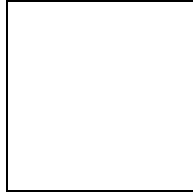
The Delaware Department of Transportation

The Delaware Transit Corporation

The Delaware River & Bay Authority

And

The Sussex County Engineering Department



Under Sec. 26.107 of CFR Part 26, dated February 2, 1999, if at any time, the Department or a recipient has reason to believe that any person or firm has willfully and knowingly provided incorrect information or made false statements, the Department may initiate suspension or debarment proceedings against the person or firm under 49 CFR Part 31, Program Fraud and Civil Remedies, and/or refer the matter to the Department of Justice under 18 Y, /s, /c, 1001.

Disadvantaged Business Enterprise Program
49 C.F.R. part 26

Uniform Certification Application

Roadmap for Applicants

⌘ **Should I apply?**

- Is your firm at least 51%-owned by a socially and economically disadvantaged individual(s) who also controls the firm?
- Is the disadvantaged owner a U.S. citizen or lawfully admitted permanent resident of the U.S.?
- Is your firm a small business that meets the Small Business Administration's (SBA's) size standard and does not exceed \$17.42 million in gross annual receipts?
- Is your firm organized as a for-profit business?
 - ⇒ If you answered "Yes" to all of the questions above, you may be eligible to participate in the U.S. DOT DBE program.

⌘ **Is there an easier way to apply?**

If you are currently certified by the SBA as an 8(a) and/or SDB firm, you may be eligible for a streamlined certification application process. Under this process, the certifying agency to which you are applying will accept your current SBA application package in lieu of requiring you to fill out and submit this form. **NOTE: You must still meet the requirements for the DBE program, including undergoing an on-site review.**

⌘ **Be sure to attach all of the required documents listed in the Documents Check List at the end of this form with your completed application.**

⌘ **Where can I find more information?**

- U.S. DOT – <http://osdbuweb.dot.gov/business/dbe/index.html> (this site provides useful links to the rules and regulations governing the DBE program, questions and

answers, and other pertinent information)

- SBA – <http://www.ntis.gov/naics> (provides a listing of NAICS codes) and <http://www.sba.gov/size/indextableofsize.html> (provides a listing of SIC codes)
- 49 CFR Part 26 (the rules and regulations governing the DBE program)

Under Sec. 26.107 of 49 CFR Part 26, dated February 2, 1999, if at any time, the Department or a recipient has reason to believe that any person or firm has willfully and knowingly provided incorrect information or made false statements, the Department may initiate suspension or debarment proceedings against the person or firm under 49 CFR Part 29, take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, and/or refer the matter to the Department of Justice for criminal prosecution under 18 U.S.C. 1001, which prohibits false statements in Federal programs.

**INSTRUCTIONS FOR COMPLETING THE DISADVANTAGED BUSINESS ENTERPRISE (DBE)
PROGRAM UNIFORM CERTIFICATION APPLICATION**

NOTE: If you require additional space for any question in this application, please attach additional sheets or copies as needed, taking care to indicate on each attached sheet/copy the section and number of this application to which it refers.

Section 1: CERTIFICATION INFORMATION

A. Prior/Other Certifications

Check the appropriate box indicating for which program your firm is currently certified. If you are already certified as a DBE, indicate in the appropriate box the name of the certifying agency that has previously certified your firm, and also indicate whether your firm has undergone an onsite visit. If your firm has already undergone an onsite visit/review, indicate the most recent date of that review and the state UCP that conducted the review.

NOTE: If your firm is currently certified under the SBA's 8(a) and/or SDB programs, you may not have to complete this application. You should contact your state UCP to find out about a streamlined application process for firms that are already certified under the 8(a) and SDB programs.

Prior/Other Applications and Privileges

Indicate whether your firm or any of the persons listed has ever withdrawn an application for a DBE program or an SBA 8(a) or SDB program, or whether any have ever been denied certification, decertified, debarred, suspended, or had bidding privileges denied or restricted by any state or local agency or Federal entity. If your answer is yes, indicate the date of such action, identify the name of the agency, and explain fully the nature of the action in the space provided.

Section 2: GENERAL INFORMATION

1. Contact Information

- (A) State the name and title of the person who will serve as your firm's primary contact under this application.
- (B) State the legal name of your firm, as indicated in your firm's Articles of Incorporation or charter.
- (C) State the primary phone number of your firm.
- (D) State a secondary phone number, if any.
- (E) State your firm's fax number, if any.
- (F) State your firm's or your contact person's email address.
- (G) State your firm's website address, if any.
- (H) State the street address of your firm (i.e. the physical location of its offices -- not a post office box address).
- (I) State the mailing address of your firm, if it is different from your firm's street address.

2. Business Profile

- (1) In the box provided, briefly describe the primary business and professional activities in which your firm engages.
- (2) State the Federal Tax ID number of your firm as provided on your firm's filed tax returns, if you have one. This could also be the Social Security number of the owner of your firm.
- (3) State the date on which your firm was officially established, as stated in your firm's Articles of Incorporation or charter.
- (4) State the date on which you and/or each other owner took ownership of the firm.
- (5) Check the appropriate box that describes the manner in which you and each other owner acquired ownership of your firm. If you checked "Other," explain in the space provided.
- (6) Check the appropriate box that indicates whether your firm is "for profit."
NOTE: If you checked "No," then you do NOT qualify for the DBE program and therefore do not need to complete the rest of this application. The DBE program requires all participating firms be for-profit enterprises.
- (7) Check the appropriate box that describes the legal form of ownership of your firm, as indicated in your firm's Articles of Incorporation. If you checked "Other," briefly explain in the space provided.
- (8) Check the appropriate box that indicates whether your firm has ever existed under different ownership, a different type of ownership, or a different name. If you checked "Yes," specify which and briefly explain the circumstances in the space provided.
- (9) Indicate in the spaces provided how many employees your firm has, specifying the number of employees who work on a full-time and part-time basis.
- (10) Specify the total gross receipts of your firm for each of the past three years, as declared in your firm's filed tax returns.

3. Relationships with Other Businesses

- (1) Check the appropriate box that indicates whether your firm is co-located at any of its business locations, or whether your firm shares a telephone number(s), a post office box, any office space, a yard, warehouse, other facilities, any equipment, or any office staff with any other business, organization, or entity of any kind. If you answered "Yes," then specify the name of the other firm(s) and briefly explain the nature of the shared facilities or other items in the space provided.
- (2) Check the appropriate box that indicates whether at present, or at any time in the past:
 - (a) Your firm has been a subsidiary of any other firm;
 - (b) Your firm consisted of a partnership in which one or more of the partners are other firms;
 - (c) Your firm has owned any percentage of any other firm; and

- (d) Your firm has had any subsidiaries of its own.
- (3) Check the appropriate box that indicates whether any other firm has ever had an ownership interest in your firm.
- (4) If you answered “Yes” to any of the questions in (2)(a)-(d) or (3), identify the name, address and type of business for each.
- 4. Immediate Family Member Businesses**
- Check the appropriate box that indicates whether any of your immediate family members own or manage another company. An “immediate family member” is any person who is your father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, or father-in-law. If you answered “Yes,” provide the name of each relative, your relationship to them, the name of the company they own or manage, the type of business, and whether they own or manage the company.

Section 3: OWNERSHIP

Identify all individuals or holding companies with any ownership interest in your firm, providing the information requested below (if your firm has more than one owner, provide completed copies of this section for each additional owner):

A. Background Information

- (1) Give the name of the owner.
- (2) State his/her title or position within your firm.
- (3) Give his/her home phone number.
- (4) State his/her home (street) address.
- (5) Check the appropriate box that indicates this owner’s gender.
- (6) Check the appropriate box that indicates this owner’s ethnicity (check all that apply). If you checked “Other,” specify this owner’s ethnic group/identity not otherwise listed.
- (7) Check the appropriate box to indicate whether this owner is a U.S. citizen.
- (8) If this owner is not a U.S. citizen, check the appropriate box that indicates whether this owner is a lawfully admitted permanent resident. If this owner is neither a U.S. citizen nor a lawfully admitted permanent resident of the U.S., then this owner is NOT eligible for certification as a DBE owner. This, however, does not necessarily disqualify your firm altogether from the DBE program if another owner is a U.S. citizen or lawfully admitted permanent resident and meets the program’s other qualifying requirements.

B. Ownership Interest

- (1) State the number of years, during which this owner has been an owner of your firm.
- (2) Indicate the dollar value of this owner’s initial investment to acquire an ownership interest in your firm, broken down by cash, real estate, equipment, and/or other investment.
- (3) State the percentage of total ownership control of your firm that this owner possesses.
- (4) State the familial relationship of this owner to each other owner of your firm.
- (5) Indicate the number, percentage of the total, class, date acquired, and method by which this owner acquired his/her shares of stock in your firm.
- (6) Check the appropriate box that indicates whether this owner performs a management or supervisory function for any other business. If you checked “Yes,” state the name of the other business and this owner’s title or function held in that business.
- (7) Check the appropriate box that indicates whether this owner owns or works for any other firm(s) that has any relationship with your firm. If you checked “Yes,” identify the name of the other business and this owner’s title or function held in that business. Briefly describe the nature of the business relationship in the space provided.

B. Disadvantaged Status

NOTE: You only need to complete this section for each owner that is applying for DBE qualification (i.e. for each owner who is claiming to be “socially and economically

disadvantaged” and whose ownership interest is to be counted toward the control and 51% ownership requirements of the DBE program)

- (1) Indicate in the space provided the total Personal Net Worth (PNW) of each owner who is applying for DBE qualification. Use the PNW calculator form at the end of this application to compute each owner’s PNW.
- (2) Check the appropriate box that indicates whether any trust has ever been created for the benefit of this disadvantaged owner. If you answered “Yes,” briefly explain the nature, history, purpose, and current value of the trust(s).

Section 4: CONTROL

A. Identify your firm's Officers and Board of Directors:

- (1) In the space provided, state the name, title, and date of appointment, ethnicity, and gender of each officer of your firm.
- (2) In the space provided, state the name, title, and date of appointment, ethnicity, and gender of each individual serving on your firm’s Board of Directors.
- (3) Check the appropriate box that indicates whether any of your firm’s officers and/or directors listed above performs a management or supervisory function for any other business. If you answered “Yes,” identify each person by name, his/her title, the name of the other business in which s/he is involved, and his/her function performed in that other business.
- (4) Check the appropriate box that indicates whether any of your firm’s officers and/or directors listed above own or work for any other firm(s) that has a relationship with your firm. If you answered “Yes,” identify the name of the firm, the officer or director, and the nature of his/her business relationship with that other firm.

B. Identify your firm's management personnel (by name, title, ethnicity, and gender) who control your firm in the following areas:

- (1) Making of financial decisions on your firm’s behalf, including the acquisition of lines of credit, surety bonds, supplies, etc.;
- (2) Estimating and bidding, including calculation of cost estimates, bid preparation and submission;
- (3) Negotiating and contract execution, including participation in any of your firm’s negotiations and executing contracts on your firm’s behalf;
- (4) Hiring and/or firing of management personnel, including interviewing and conducting performance evaluations;
- (5) Field/Production operations supervision, including site supervision, scheduling, project management services, etc.;
- (6) Office management;
- (7) Marketing and sales;
- (8) Purchasing of major equipment;
- (9) Signing company checks (for any purpose); and
- (10) Conducting any other financial transactions on your firm’s behalf not otherwise listed.
- (11) Check the appropriate box that indicates whether any of the persons listed in (1) through (10) above perform a management or supervisory function for any other business. If you answered “Yes,” identify each person by name, his/her title, the name of the other business in which s/he is involved, and his/her function performed in that other business.
- (12) Check the appropriate box that indicates whether any of the persons listed in (1) through (10) above own or work for any other firm(s) that has a relationship with your firm. If you answered “Yes,” identify the name of the firm, the name of the person, and the nature of his/her business relationship with that other firm.

C. Indicate your firm's inventory in the following categories:

A. Equipment

State the type, make and model, and current dollar value of each piece of equipment held and/or used by your firm. Indicate whether each piece is either owned or leased by your firm.

B. Vehicles

State the type, make and model, and current dollar value of each motor vehicle held and/or used by your firm. Indicate whether each vehicle is either owned or leased by your firm.

C. Office Space

State the street address of each office space held and/or used by your firm. Indicate whether your firm owns or leases the office space and the current dollar value of that property or its lease.

D. Storage Space

State the street address of each storage space held and/or used by your firm. Indicate whether your firm owns or leases the storage space and the current dollar value of that property or its lease.

D. Does your firm rely on any other firm for management functions or employee payroll?

Check the appropriate box that indicates whether your firm relies on any other firm for management functions or for employee payroll. If you answered "Yes," briefly explain the nature of that reliance and the extent to which the other firm carries out such functions.

E. Financial Information

(1) Banking Information

- (a) State the name of your firm's bank.
- (b) Give the main phone number of your firm's bank branch.
- (c) Give the address of your firm's bank branch.

(2) Bonding Information

- (a) State your firm's Binder Number.
- (b) State the name of your firm's bond agent and/or broker.
- (c) Give your agent's/broker's phone number.
- (d) Give your agent's/broker's address.
- (e) State your firm's bonding limits (in dollars), specifying both the Aggregate and Project Limits.

F. Identify all sources, amounts, and purposes of money loaned to your firm, including the names of persons or firms securing the loan, if other than the listed owner:

State the name and address of each source, the original dollar amount and the current balance of each loan, and the purpose for which each loan was made to your firm.

G. List all contributions or transfers of assets to/from your firm and to/from any of its owners over the past two years:

Indicate in the spaces provided, the type of contribution or asset that was transferred, its current dollar value, the person or firm from whom it was transferred, the person or firm to whom it was transferred, the relationship between the two persons and/or firms, and the date of the transfer.

H. List current licenses/permits held by any owner or employee of your firm.

List the name of each person in your firm who holds a professional license or permit, the type of permit or license, the expiration date of the permit or license, and the license/permit number and issuing State of the license or permit.

I. List the three largest contracts completed by your firm in the past three years, if any.

List the name of each owner or contractor for each contract, the name and location of the projects under each contract, the type of work performed on each contract, and the dollar value of each contract.

J. List the three largest active jobs on which your firm is currently working.

For each active job listed, state the name of the prime contractor and the project number, the location, the type of work performed, the project start date, the anticipated completion date, and the dollar value of the contract.

AFFIDAVIT & SIGNATURE

Carefully read the attached affidavit in its entirety. Fill in the required information for each blank space, and sign and date the affidavit in the presence of a Notary Public, who must then notarize the form

Section 1: CERTIFICATION INFORMATION

A. Prior/Other Certifications

Is your firm currently certified for any of the following programs? <i>(If Yes, check appropriate box(es))</i>	_DBE	Name of certifying agency:
		Has your firm's state UCP conducted an on-site visit? __ Yes, on ___/___/___ State: _____ __No
	_ 8(a)	⊗ STOP! If you checked either the 8(a) or SDB box, you <u>may not</u> have to complete this application. Ask your state UCP about the streamlined application process under the SBA-DOT MOU.
	_SDB	

B. Prior/Other Applications and Privileges

Has your firm (under any name) or any of its owners, Board of Directors, officers or management personnel, ever withdrawn an application for any of the programs listed above, or ever been denied certification, decertified, or debarred or suspended or otherwise had bidding privileges denied or restricted by any state or local agency, or Federal entity? __ Yes, on ___/___/___ __ No If Yes, identify State and name of state, local, or Federal agency and explain the nature of the action:

Section 2: GENERAL INFORMATION

A. Contact Information

(1) Contact person and Title:		(2) Legal name of firm:		
(3) Phone #:	(4) Other Phone #:	(5) Fax #:		
(6) E-mail:		(7) Website <i>(if have one)</i> :		
(8) Street address of firm <i>(No P.O. Box)</i> :		City:	County/Parish:	State: Zip:
(9) Mailing address of firm <i>(if different)</i> :		City:	County/Parish:	State: Zip:

B. Business Profile

(1) Describe the primary activities of your firm:	(2) Federal Tax ID (if any):
(3) This firm was established on ___/___/___	(4) I/We have owned this firm since: ___/___/___
(5) Method of acquisition <i>(check all that apply)</i> : __ Started new business __ Bought existing business __ Inherited business __ Secured concession __ Merger or consolidation __ Other <i>(explain)</i> _____	
(6) Is your firm "for profit"? __Yes __ No	⊗ STOP! If your firm is NOT for-profit, then you do NOT qualify for this program and do NOT need to fill out this application.
(7) Type of firm <i>(check all that apply)</i> : __ Sole Proprietorship __ Partnership __ Corporation	

<input type="checkbox"/> Limited Liability Partnership <input type="checkbox"/> Limited Liability Corporation <input type="checkbox"/> Joint Venture <input type="checkbox"/> Other, Describe: _____						
(9) Number of employees: Full-time _____ Part-time _____ Total _____						
(10) Specify the gross receipts of the firm for the last 3 years: <table style="width: 100%; border: none;"> <tr> <td style="width: 60%;">Year _____</td> <td style="width: 40%;">Total receipts \$ _____</td> </tr> <tr> <td>Year _____</td> <td>Total receipts \$ _____</td> </tr> <tr> <td>Year _____</td> <td>Total receipts \$ _____</td> </tr> </table>	Year _____	Total receipts \$ _____	Year _____	Total receipts \$ _____	Year _____	Total receipts \$ _____
Year _____	Total receipts \$ _____					
Year _____	Total receipts \$ _____					
Year _____	Total receipts \$ _____					

C. Relationships with Other Businesses

(1) Is your firm co-located at any of its business locations, or does it share a telephone number, P.O. Box, office space, yard, warehouse, facilities, equipment, or office staff, with any other business, organization, or entity? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, identify: Other Firm's name: _____ Explain nature of shared facilities: _____													
(2) At present, or at any time in the past, has your firm:	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 2px;">(a) Been a subsidiary of any other firm?</td> <td style="text-align: right; padding: 2px;"><input type="checkbox"/> Yes <input type="checkbox"/> No</td> </tr> <tr> <td style="padding: 2px;">(b) Consisted of a partnership in which one or more of the partners are other Firms?</td> <td style="text-align: right; padding: 2px;"><input type="checkbox"/> Yes <input type="checkbox"/> No</td> </tr> <tr> <td style="padding: 2px;">(c) Owned any percentage of any other firms? No</td> <td style="text-align: right; padding: 2px;"><input type="checkbox"/> Yes <input type="checkbox"/> No</td> </tr> <tr> <td style="padding: 2px;">(d) Had any subsidiaries?</td> <td style="text-align: right; padding: 2px;"><input type="checkbox"/> Yes <input type="checkbox"/> No</td> </tr> </table>	(a) Been a subsidiary of any other firm?	<input type="checkbox"/> Yes <input type="checkbox"/> No	(b) Consisted of a partnership in which one or more of the partners are other Firms?	<input type="checkbox"/> Yes <input type="checkbox"/> No	(c) Owned any percentage of any other firms? No	<input type="checkbox"/> Yes <input type="checkbox"/> No	(d) Had any subsidiaries?	<input type="checkbox"/> Yes <input type="checkbox"/> No				
(a) Been a subsidiary of any other firm?	<input type="checkbox"/> Yes <input type="checkbox"/> No												
(b) Consisted of a partnership in which one or more of the partners are other Firms?	<input type="checkbox"/> Yes <input type="checkbox"/> No												
(c) Owned any percentage of any other firms? No	<input type="checkbox"/> Yes <input type="checkbox"/> No												
(d) Had any subsidiaries?	<input type="checkbox"/> Yes <input type="checkbox"/> No												
(3) Has any other firm had an ownership interest in your firm at present or at any time in the past? <input type="checkbox"/> Yes <input type="checkbox"/> No													
(4) If you answered "Yes" to any of the questions in (2)(a)-(d) and/or (3), identify the following for each (<i>attach extra sheets, if needed</i>): <table style="width: 100%; border: none; margin-top: 10px;"> <tr> <th style="text-align: left; width: 35%;"><u>Name</u></th> <th style="text-align: left; width: 35%;"><u>Address</u></th> <th style="text-align: left; width: 30%;"><u>Type of Business</u></th> </tr> <tr> <td>1.</td> <td></td> <td></td> </tr> <tr> <td>2.</td> <td></td> <td></td> </tr> <tr> <td>3.</td> <td></td> <td></td> </tr> </table>		<u>Name</u>	<u>Address</u>	<u>Type of Business</u>	1.			2.			3.		
<u>Name</u>	<u>Address</u>	<u>Type of Business</u>											
1.													
2.													
3.													

D. Immediate Family Member Businesses

Do any of your immediate family members own or manage another company? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, then list (<i>attach extra sheets, if needed</i>):				
<u>Name</u> or Manage?	<u>Relationship</u>	<u>Company</u>	<u>Type of Business</u>	<u>Own</u>
1.				
2.				

Section 3: OWNERSHIP

Identify all individuals or holding companies with any ownership interest in your firm, providing the information requested below (*If more than one owner, attach separate sheets for each additional owner*):

A. Background Information

(1) Name:	(2) Title:	(3) Home Phone #:
(4) Home Address (<i>street and number</i>):		City: State: Zip:
(5) Gender: <input type="checkbox"/> Male <input type="checkbox"/> Female	(6) Ethnic group membership (<i>Check all that apply</i>): <input type="checkbox"/> Black <input type="checkbox"/> Hispanic <input type="checkbox"/> Native American <input type="checkbox"/> Asian Pacific <input type="checkbox"/> Subcontinent Asian <input type="checkbox"/> Other (<i>specify</i>) _____	
(7) U.S. Citizen: <input type="checkbox"/> Yes <input type="checkbox"/> No		
(8) Lawfully Admitted Permanent Resident: <input type="checkbox"/> Yes <input type="checkbox"/> No		

B. Ownership Interest

(1) Number of years as owner:	(2) Initial investment to acquire ownership interest in firm:	Type	Dollar Value
(3) Percentage owned:		Cash	\$
(4) Familial relationship to other owners:		Real Estate	\$
		Equipment	\$
		Other	\$
(5) Shares of Stock: <u>Number</u> <u>Percentage</u> <u>Class</u> <u>Date acquired</u> <u>Method Acquired</u>			
(6) Does this owner perform a management or supervisory function for any other business? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, identify: Name of Business: _____ Function/Title: _____			
(7) Does this owner own or work for any other firm(s) that has a relationship with this firm (<i>e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.</i>)? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, identify: Name of Business: _____ Function/Title: _____ Nature of Business Relationship: _____			

C. Disadvantaged Status – NOTE: Complete this section only for each owner applying for DBE qualification (i.e. for each owner claiming to be socially and economically disadvantaged)

(1) What is the Personal Net Worth (PNW) of the owner(s) applying for DBE qualification? (<i>Use and attach the Personal Financial Statement form at the end of this application; attach additional sheets if more than one owner is applying</i>)
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Section 4: CONTROL**A. Identify your firm's Officers & Board of Directors** (*If additional space is required, attach a separate sheet*):

	Name	Title	Date Appointed	Ethnicity	Gender
(1) Officers of the Company	(a)				
	(b)				
	(c)				
	(d)				
	(e)				
(2) Board of	(a)				

Directors	(b)				
	(c)				
	(d)				
	(e)				

(3) Do any of the persons listed in (1) and/or (2) above perform a management or supervisory function for any other business? ☐ Yes ☐ No

If Yes, identify for each: Person: _____ Title: _____

Business: _____ Function: _____

(4) Do any of the persons listed (1) and/or (2) above own or work for any other firm(s) that has a relationship with this firm (e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.)?

☐ Yes ☐ No

If Yes, identify for each: Firm Name: _____ Person: _____

Nature of Business Relationship: _____

B. Identify your firm's management personnel who control your firm in the following areas (If more than two persons, attach a separate sheet):

	Name	Title	Ethnicity	Gender
(1) Financial Decisions (responsibility for acquisition of lines of credit, surety bonding, supplies, etc.)	a.			
	b.			
(2) Estimating and bidding	a.			
	b.			
(3) Negotiating and Contract Execution	a.			
	b.			
(4) Hiring/firing of management personnel	a.			
	b.			
(5) Field/Production Operations Supervisor	a.			
	b.			
(6) Office management	a.			
	b.			
(7) Marketing/Sales	a.			
	b.			
(8) Purchasing of major equipment	a.			
	b.			
(9) Authorized to Sign Company Checks (for any purpose)	a.			
	b.			
(10) Authorized to make Financial Transactions	a.			
	b.			

(11) Do any of the persons listed in (1) through (10) above perform a management or supervisory function for any other business? ☐ Yes ☐ No

If Yes, identify for each: Person: _____ Title: _____

Business: _____ Function: _____
<p>(12) Do any of the persons listed in (1) through (10) above own or work for any other firm(s) that has a relationship with this firm (<i>e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.</i>)?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If Yes, identify for each: Firm Name: _____ Person: _____</p> <p>Nature of Business Relationship: _____</p>

C. Indicate your firm's inventory in the following categories (*attach additional sheets if needed*):

(1) Equipment

Type of Equipment	Make/Model	Current Value	Owned or Leased?
(a)			
(b)			
(c)			

(2) Vehicles

Type of Vehicle	Make/Model	Current Value	Owned or Leased?
(a)			
(b)			
(c)			

(3) Office Space

Street Address	Owned or Leased?	Current Value of Property or Lease
(a)		
(b)		

(4) Storage Space

Street Address	Owned or Leased?	Current Value of Property or Lease
(a)		
(b)		

D. Does your firm rely on any other firm for management functions or employee payroll?

☐ Yes ☐ No

If Yes, explain:

E. Financial Information**(1) Banking Information:**

(a) Name of bank: _____ (b) Phone No: () _____
(c) Address of bank: _____ City: _____ State: _____ Zip: _____

(2) **Bonding Information:** If you have bonding capacity, identify: (a) Binder No: _____
(b) Name of agent/broker _____ (c) Phone No: () _____
(d) Address of agent/broker: _____ City: _____ State: _____ Zip: _____
(e) Bonding limit: Aggregate limit \$ _____ Project limit \$ _____

F. Identify all sources, amounts, and purposes of money loaned to your firm, including the names of any persons or firms securing the loan, if other than the listed owner:

<u>Name of Source</u>	<u>Address of Source</u>	Name of Person Securing the Loan	Original Amount	Current Balance	Purpose of Loan
1.					
2.					
3.					

G. List all contributions or transfers of assets to/from your firm and to/from any of its owners over the past two years (*attach additional sheets if needed*):

Contribution/Asset	Dollar Value	From Whom Transferred	To Whom Transferred	Relationship	Date of Transfer
1.					
2.					
3.					

H. List current licenses/permits held by any owner and/or employee of your firm (*e.g. contractor, engineer, architect, etc.*)(*Attach additional sheets if needed*):

Name of License/Permit Holder	Type of License/Permit	Expiration Date	License Number and State
1.			
2.			
3.			

I. List the three largest contracts completed by your firm in the past three years, if any:

Name of Owner/Contractor	Name/Location of Project	Type of Work Performed	Dollar Value of Contract
1.			
2.			
3.			

J. List the three largest active jobs on which your firm is currently working:

Name of Prime Contractor and Project Number	Location of Project	Type of Work	Project Start Date	Anticipated Completion Date	Dollar Value of Contract
1.					
2.					
3.					

AFFIDAVIT OF CERTIFICATION

This form must be signed and notarized for each owner upon which disadvantaged status is relied.

A MATERIAL OR FALSE STATEMENT OR OMISSION MADE IN CONNECTION WITH THIS APPLICATION IS SUFFICIENT CAUSE FOR DENIAL OF CERTIFICATION, REVOCATION OF A PRIOR APPROVAL, INITIATION OF SUSPENSION OR DEBARMENT PROCEEDINGS, AND MAY SUBJECT THE PERSON AND/OR ENTITY MAKING THE FALSE STATEMENT TO ANY AND ALL CIVIL AND CRIMINAL PEALTIES AVAILABLE PURSUANT TO APPLICABLE FEDERAL AND STATE LAW.

I _____ (full name printed), swear or affirm under penalty of law that I am _____ (title) of applicant firm _____ (firm name) and that I have read and understood all of the questions in this application and that all of the foregoing information and statements submitted in this application and its attachments and supporting documents are true and correct to the best of my knowledge, and that all responses to the questions are full and complete, omitting no material information. The responses include all material information necessary to fully and accurately identify and explain the operations, capabilities and pertinent history of the named firm as well as the ownership, control, and affiliations thereof.

I recognize that the information submitted in this application is for the purpose of inducing certification approval by a government agency. I understand that a government agency may, by means it deems appropriate, determine the accuracy and truth of the statements in the application, and I authorize such agency to contact any entity named in the application, and the named firm's bonding companies, banking institutions, credit agencies, contractors, clients, and other certifying agencies for the purpose of verifying the information supplied and determining the named firm's eligibility.

I agree to submit to government audit, examination and review of books, records, documents and files, in whatever form they exist, of the named firm and its affiliates, inspection of its places(s) of business and equipment, and to permit interviews of its principals, agents, and employees. I understand that refusal to permit such inquiries shall be grounds for denial of certification.

If awarded a contract or subcontract, I agree to promptly and directly provide the prime contractor, if any, and the Department, recipient agency, or federal funding agency on an ongoing basis, current, complete and accurate information regarding (1) work performed on the project; (2) payments; and (3) proposed changes, if any, to the foregoing arrangements.

I agree to provide written notice to the recipient agency or Unified Certification Program (UCP) of any material change in the information contained in the original application within 30 calendar days of such change (e.g., ownership, address, telephone number, etc.).

I acknowledge and agree that any misrepresentations in this application or in records pertaining to a contract or subcontract will be grounds for terminating any contract or subcontract which may be awarded; denial or revocation of certification; suspension and debarment; and for initiating action under federal and/or state law concerning false statement, fraud or other applicable offenses.

I certify that I am a socially and economically disadvantaged individual who is an owner of the above-referenced firm seeking certification as a Disadvantaged Business Enterprise (DBE). In support of my application, I certify that I am a member of one or more of the following groups, and that I have held myself out as a member of the group(s) (circle all that apply):

.

Female Black American Hispanic American
Native American Asian- Pacific American
Subcontinent Asian American
Other (specify) _____

I certify that I am socially disadvantaged because I have been subjected to racial or ethnic prejudice or cultural bias, or have suffered the effects of discrimination, because of my identity as a member of one or more of the groups identified above, without regard to my individual qualities.

I further certify that my personal net worth does not exceed \$750,000, and that I am economically disadvantaged because my ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially and economically disadvantaged.

I declare under penalty of perjury that the information provided in this application and supporting documents is true and correct.

Executed on _____(Date)

Signature _____
(DBE Applicant)

NOTARY CERTIFICATE

DBE UNIFORM CERTIFICATION APPLICATION SUPPORTING DOCUMENTS CHECKLIST
In order to complete your application for DBE certification, you must attach copies of all of the following documents as they apply to you and your firm.

All Applicants

- π Work experience resumes (that include places of ownership/employment with corresponding dates), for all owners and officers of your firm
- π Personal Financial Statement (form available with this application)
- π Personal tax returns for the past three years, if applicable, for each owner claiming disadvantaged status
- π Your firm's tax returns (gross receipts) and all related schedules for the past three years
- π Documented proof of contributions used to acquire ownership for each owner (*e.g. both sides of cancelled checks*)
- π Your firm's signed loan agreements, security agreements, and bonding forms
- π Descriptions of all real estate (including office/storage space, etc.) owned/leased by your firm and documented proof of ownership/signed leases
- π List of equipment leased and signed lease agreements
- π List of construction equipment and/or vehicles owned and titles/proof of ownership
- π Documented proof of any transfers of assets to/from your firm and/or to/from any of its owners over the past two years
- π Year-end balance sheets and income statements for the past three years (*or life of firm, if less than three years*); a new business must provide a current balance sheet
- π All relevant licenses, license renewal forms, permits, and haul authority forms
- π DBE and SBA 8(a) or SDB certifications, denials, and/or decertifications, if applicable
- π Bank authorization and signatory cards
- π Schedule of salaries (or other compensation or remuneration) paid to all officers, managers, owners, and/or directors of the firm
- π Trust agreements held by any owner claiming disadvantaged status, if any

Partnership or Joint Venture

- π Original and any amended Partnership or Joint Venture Agreements

Corporation or LLC

- π Official Articles of Incorporation (*signed by the state official*)
- π Both sides of all corporate stock certificates and your firm's stock transfer ledger
- π Shareholders' Agreement
- π Minutes of all stockholders and board of directors meetings
- π Corporate by-laws and any amendments
- π Corporate bank resolution and bank signature cards
- π Official Certificate of Formation and Operating Agreement with any amendments (for LLCs)

Trucking Company

- π Documented proof of ownership of the company
- π Insurance agreements for each truck owned or operated by your firm
- π Title(s) and registration certificate(s) for each truck owned or operated by your firm
- π List of U.S. DOT numbers for each truck owned or operated by your firm

Regular Dealer

- π Proof of warehouse ownership or lease
- π List of product lines carried
- π List of distribution equipment owned and/or leased

NOTE: The specific state UCP to which you are applying may have additional required documents that you must also supply with your application. Contact the appropriate certifying agency to which you are applying.

Attachment G: Personal Net Worth Statement

Attachment G

Personal Net Worth



- () New Certification Application
 () Annual "No Change Affidavit"
 () Full Recertification Applicant (Renewal Applicants)

PERSONAL FINANCIAL STATEMENT As of:

Complete for each socially disadvantaged owner. New & Full applicants attach the last 3 years' personal federal tax returns.

Name **Business Phone** ()

Residence Address **Residence Phone** ()

City, State & Zip Code

Business Name of Applicant

ASSETS (Omit Cents)		LIABILITIES (Omit Cents)	
If you have any assets/liabilities jointly or as community property with another person, include only your share.			
Cash on hand and in Banks.....	\$	Accounts Payable.....	\$
Savings Accounts.....	\$	Notes Payable to Banks and Others	\$
IRA or Other Retirement Account	\$	(Describe in Section 1)	\$
Personal Receivables.....	\$	Notes Payable to Banks and Others	\$
Life Insurance – Cash Value Only	\$	Installment Account (Auto).....	\$
(Complete Section 7)	\$	Installment Account (Other).....	\$
Stocks and Bonds.....	\$	Loan on Life Insurance.....	\$
(Describe in Section 2)	\$	Mortgages on Real Estate.....	\$
Real Estate.....	\$	(Describe in Section 3)	\$
(Describe in Section 3)	\$	Unpaid Taxes.....	\$
Automobile(s) – Present Value...	\$	(Describe in Section 5)	\$
Other Personal Property.....	\$	Other Liabilities.....	\$
(Describe in Section 4)	\$	(Describe in Section 6)	\$
Other Assets.....	\$	Total Liabilities.....	\$
(Describe in Section 4)	\$	Net Worth.....	\$
Total Assets.....	\$	(Total Assets minus Total Liabilities)	

Source of Income		Contingent Liabilities	
		(Contingent Liabilities do not reduce net worth.)	
Salary.....	\$	As Endorser or Co-Maker.....	\$
Net Investment Income.....	\$	Legal Claims & Judgments.....	\$
Real Estate Income.....	\$	Provision - Fed. Income Tax.....	\$
Other Income.....	\$	Other Special Debt.....	\$

Section 1. Personal Notes Payable to Bank and Others (Use attachments if necessary. Each attachment must be identified as a part of this statement and signed.)

1

Name and Address of Noteholder(s)	Original Balance	Current Balance	Payment Amount	Frequency (monthly, etc.)	How Secured or Endorsed Type of Collatera

Section 2. Stocks and Bonds (Use attachments if necessary. Each attachment must be identified as a part of this statement and signed.) Do not include your ownership interest in an applicant or participating DBE firm. Mark value as of date of this statement.

Number of Shares	Name of Securities	Fair Market Value

Section 3. Real Estate Owned (List each parcel separately. Use attachments if necessary. Each attachment must be identified as a part of this statement and signed.) Do not include your primary place of residence.

	<u>Property A</u>	<u>Property B</u>	<u>Property C</u>
Type of Property			
Address			
Date Purchased			
Original Cost			
Present Market Value			
Name and Address of Mortgage Holder			
Mortgage Account Number			
Mortgage Balance			

Amount of Payment Per Month/Year			
Status of Mortgage			

Section 4. Other Personal Property and Other Assets (Describe, and if any is pledged as security, state name and address of lien holder, amount of lien, terms of payment, and if delinquent, describe delinquency.) Do not include your ownership interest in an applicant or participating DBE firm.

Section 5. Unpaid Taxes (Describe in detail, as to type, to whom payable, when due, amount and to what property, if any a tax lien attaches.)

Section 6. Other Liabilities (Describe in detail.)

Section 7. Life Insurance Held (Give face amount and cash surrender value of policies – name of insurance company and beneficiaries.)

I authorize the Delaware Department of Transportation to verify the accuracy of the statements made in order to determine whether I meet the standards of economic disadvantage for participation in the DBE program at the Delaware Department of Transportation.

Signature: _____ **Title:** _____ **SSN:** _____ **Date:** _____

I swear that the foregoing statements and ensuing attachments are true and accurate.

(SIGNATURE OF AFFIANT) (DATE)

(SEAL)

(PRINTED NAME)

(TITLE)

SWORN AND SUBSCRIBED BEFORE ME

this ____ day of _____, 20____

My Commission Expires: _____

(SIGNATURE OF NOTARY PUBLIC)

Attachment H

Race Neutral Project Tracking

(Bidder's List Registration) Attachment H: **Bidder's List Registration**

Bidder's List Registration

Disadvantaged Business Enterprise (DBE) Regulations as stated in 49 CFR 26.11(c) require the Delaware Department of Transportation (DelDOT) to create and maintain a comprehensive bidders list, consisting of all firms who seek to work or are bidding on prime contracts and quoting/bidding subcontracts on federally-funded transportation projects. For every firm, the following information is required:

Firm Name	Contact Name	Contact Title	
Contact E-mail Address		Phone Number	Fax Number
Firm Mailing Address	City	State	Zip Code
Year Firm Was Established	Annual Gross Receipts \$ _____		
This firm is a non-DBE firm	This firm is DBE-certified by DelDOT		

DelDOT requires all bidders to be registered. If your firm is already registered as a bidder with DelDOT this calendar year, please disregard this form. If you have not registered, submittal of this registration is a pre-condition for award of any Federal Aid contract.

For further information about the Bidder's List, call DelDOT's DBE Program Office at 302-760-2035.

Submit completed form to:

DBE Program Office
Delaware Transportation Department
P. O. Box 778
Dover, DE 19903
Fax: 302-739-2254

Attachment I

THE DELAWARE DEPARTMENT OF
TRANSPORTATION'S ANNUAL OVERALL GOAL
METHODOLOGY

Attachment I: DBE Goal Methodology

Federal Highway Administration

THE DELAWARE DEPARTMENT OF TRANSPORTATION'S ANNUAL OVERALL GOAL METHODOLOGY

In accordance with the requirements of 49 CFR Part 26.45, following is an explanation of the methodology used to determine the annual overall DBE goal for the Delaware Department of Transportation.

Narrative Summary of Methodology / Annual Overall DBE Goal Setting Process

The overall goal setting process has two (2) steps. The first step determines the base figure. The base figure reflects the relative availability of disadvantaged business enterprises in the Delaware Department of Transportation's (DelDOT's) relevant market. Because more than a majority or all contract awards are awarded to Delaware-based businesses, the relevant market is the State of Delaware. DelDOT used the current Unified Directory of Certified DBE Firms and the U. S. Census Bureau Summary Statistics by County for the raw availability data used in Step 1. Step 2 of the goal setting process adjusts the Step 1 base figure, if necessary, to make it more precise.

Step 1: Determining the base-figure for the relative availability of Ready, Willing, and Able DBE firms

a) The base figure is calculated as follows:

The numerator consists of Ready, Willing and Able DBE firms listed in the Unified Directory of Certified DBE Firms in both the construction and professional services categories. The denominator is comprised of all relevant construction and professional services firms, including DBEs, in the relevant market.

$$\frac{\text{RWA Construction DBEs} + \text{RWA Professional DBEs}}{\text{All Construction Firms} + \text{All Professional Firms}} = \text{Base Figure}$$

In Step 1, the base figure for relative availability of DBE firms is weighted as follows:

The median spread of the previous four (4) federal fiscal years is used to weight the base figure between construction awards and professional service awards. The median is determined by averaging the middle two figures in an ordered array. It is reasonable to assume that the spread of expenditures in the coming year will follow past patterns.

$$\frac{1^{\text{st}} \text{ middle figure} + 2^{\text{nd}} \text{ middle figure}}{2} = \text{Construction Median}$$

and

$$\frac{1^{\text{st}} \text{ middle figure} + 2^{\text{nd}} \text{ middle figure}}{2} = \text{Professional Service Median}$$

The four-year median for both the construction portion and the professional service portion may result in a weighting factor that does not add up to 100%. However, it does not affect the outcome of the calculation.

The weighting is calculated as follows:

$$\begin{aligned} &\text{Construction Median (RWA Construction DBEs / All Construction Firms)} + \\ &\text{Professional Service Median (RWA Professional DBEs / All Professional Firms)} = \\ &\hspace{15em} \text{Weighted Base Figure} \end{aligned}$$

Step 2: Adjustment of the base figure

DelDOT examines all available evidence to determine what adjustment, if any, is needed to the base figure to arrive at an overall DBE goal. As outlined in Section 26.45 (d) (1) (i), the DelDOT base figure adjustment is based on the DBE past participation in DOT-assisted contracts.

DelDOT arrives at a numerator for DBE participation based upon data that provided the actual raw dollar contract award amounts for each prime contract and subcontract awarded to DBEs, on DOT-assisted contracts in the previous four federal fiscal years. The denominator is the total of awards on DOT-assisted contracts for both Construction and in Professional Services for the same time period.

Adjusting the Weighted Base figure using the Median DBE Participation

The median is determined by averaging the middle two figures in an ordered array. Using the DBE Participation figures as described above, the median was determined as follows:

$$\frac{1^{\text{st}} \text{ middle figure} + 2^{\text{nd}} \text{ middle figure}}{2} = \text{Median DBE Participation}$$

Based on the calculation above, the median DBE Participation is derived. Using the median approach the base figure adjustment calculation is as follows:

$$\frac{\text{Weighted Base Figure} + \text{Median DBE Participation}}{2} = \text{Overall Goal}$$

Race/Gender-Neutral and Race/Gender-Conscious Split

To determine a projection of the maximum feasible portion of the overall DBE goal that is potentially attainable through race-/gender-neutral participation in DOT-assisted contracting, DelDOT examines all DOT-assisted contracts that do not have a DBE contract goal in four consecutive federal fiscal years and searches for participation of DBE firms as prime contractors

or subcontractors. All available evidence is examined to determine the past level of race-/gender-neutral DBE participation in Construction and Professional Service categories for this period. The principle factor of the examination is based on the total of contract awards to DBE prime contractors and subcontractors for this period. The combined race-/gender-neutral prime contract and subcontract awards are combined to arrive at the race-/gender-neutral financial participation level of DBE firms for this period.

The numerator is the combined aggregate award amounts to DBE prime contractors and subcontractors on DOT-assisted contracts occurring in a race-/gender-neutral environment in the four consecutive federal fiscal years. The denominator is the aggregate of all awards on DOT-assisted contracts in the same time period. Following are the calculations to derive the maximum feasible portion of the overall DBE goal that is potentially attainable through race-/gender-neutral means.

$$\frac{\text{DBE R/G - N Awards in Construction and Professional Services - Last Four Years}}{\text{All Awards in Construction and Professional Services - Last Four Years}}$$

The formula above shown derives the Race-/Gender-Neutral and Race-/ Gender-Conscious Split percentage portion of the overall goal.

OVERALL GOAL SOURCE INFORMATION FOR THE DELAWARE DEPARTMENT OF TRANSPORTATION

The North American Industrial Classification codes used in the methodology and calculations are the most current NAIC code definitions. A list of the North American Industry Classifications System is shown in Attachment J.

The Federal Participation values are calculated with information from two sources. The raw award information is established with information available from DelDOT's VAX application, PROJECT STATUS INFO. (PSI). This application provides all awards between the specified dates. This information is then separated between DOT-assisted projects and state funded projects. The Finance Section provides a printout of the Account Definition Tables. These tables are used by the accounting system for percentage distribution between federal and state funds on DOT-assisted projects. The fund distributions are applied to each DOT-assisted project to calculate the participation amount. The participation amounts for each federal fiscal year are accumulated. These figures are used to determine the median DBE capacity used in the weighted base figure adjustment calculations.

The base figure weighting uses the historical spread between construction and professional service awards on DOT-assisted projects for the same federal fiscal time frame as used in other calculations. All calculation figures are truncated to four (4) significant digits.

Federal Transit Administration

In accordance with the requirements of 49 CFR Part 26.45, following is an explanation of the methodology used to determine the annual overall DBE goal for the Delaware Transit Corporation (DTC)

Narrative Summary of Methodology / Annual Overall DBE Goal Setting Process

The overall goal setting process has two (2) steps. The first step determines the base figure. The base figure reflects the relative availability of disadvantaged business enterprises. DTC uses the current DelDOT Unified Directory of Certified DBE Firms and the Census Bureau's County Business Patterns for the data used in Step 1. Step 2 of the goal setting process adjusts the Step 1 base figure.

Step 1: Determining the base-figure for the relative availability of Ready, Willing, and Able DBE firms

a) The base figure is calculated as follows:

The numerator consists of Ready, Willing and Able DBE firms listed in the Unified Directory of Certified DBE Firms. The denominator is comprised of all firms listed in the Census Bureau's County Business Patterns database, that are associated with the type of work to be performed in the fiscal year.

$$\frac{\text{Number of DBE's in directory}}{\text{Number of businesses in our market}} = \text{Base Figure}$$

Step 2: Adjustment of the base figure

Since contracting opportunities remain similar each year, adjustment to the base figure is based on DTC's past DBE Achievements.

DTC derives the historical mean of the previous four fiscal year DBE achievement percentages. The average of the base goal and the historical mean determines the adjusted base figure.

Transit Vehicle Manufacturers

The DTC will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of this section. Alternatively, the DTC may, at its discretion and with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of the TVM complying with this element of the program.

Race/Gender-Neutral and Race/Gender-Conscious Split

To determine the race neutral and race conscious split, past DBE achievements in the race neutral and race conscious areas are examined. In addition DTC considers the types of projects to be completed for the fiscal year and the availability of certified DBEs for those projects.

Attachment J

Delaware: North America Industry Classifications System – Revisions for 2002

Attachment J: NAICS Codes

1997 Economic Census: Delaware: North America Industry Classifications System – Revisions for 2002

NAICS Codes

22 Utilities

- 221 Utilities
- 2211 Electric Power Generation, Transmission and Distribution
 - 22111 Electric Power Generation
 - 221111 Hydroelectric Power Generation
 - 221112 Fossil Fuel Electric Power Generation
 - 221113 Nuclear Electric Power Generation
 - 221119 Other Electric Power Generation
 - 22112 Electric Power Transmission, Control, and Distribution
 - 221121 Electric Bulk Power Transmission and Control
 - 221122 Electric Power Distribution
- 2212 Natural Gas Distribution
 - 22121 Natural Gas Distribution
 - 221210 Natural Gas Distribution
- 2213 Water, Sewage and Other Systems
 - 22131 Water Supply and Irrigation Systems
 - 221310 Water Supply and Irrigation Systems
 - 22132 Sewage Treatment Facilities
 - 221320 Sewage Treatment Facilities
- 22133 Steam and Air-Conditioning Supply
 - 221330 Steam and Air-Conditioning Supply

23 Construction

- 236 Construction of Buildings
 - 2361 Residential Building Construction
 - 23611 Residential Building Construction
 - 236115 New Single-Family Housing Construction (except Operative Builders)
 - 236116 New Multifamily Housing Construction (except Operative Builders)
 - 236117 New Housing Operative Builders
 - 236118 Residential Remodelers
 - 2362 Nonresidential Building Construction
 - 23621 Industrial Building Construction
 - 236210 Industrial Building Construction
 - 23622 Commercial and Institutional Building Construction
 - 236220 Commercial and Institutional Building Construction
 - 237 Heavy and Civil Engineering Construction
 - 2371 Utility System Construction
 - 23711 Water and Sewer Line and Related Structures Construction
 - 237110 Water and Sewer Line and Related Structures Construction
 - 23712 Oil and Gas Pipeline and Related Structures Construction

237120 Oil and Gas Pipeline and Related Structures Construction
 23713 Power and Communication Line and Related Structures Construction
 237130 Power and Communication Line and Related Structures Construction
 2372 Land Subdivision
 23721 Land Subdivision
 237210 Land Subdivision
 2373 Highway, Street, and Bridge Construction
 23731 Highway, Street, and Bridge Construction
 237310 Highway, Street, and Bridge Construction
 2379 Other Heavy and Civil Engineering Construction
 23799 Other Heavy and Civil Engineering Construction
 237990 Other Heavy and Civil Engineering Construction
 238 Specialty Trade Contractors
 2381 Foundation, Structure, and Building Exterior Contractors
 23811 Poured Concrete Foundation and Structure Contractors
 238110 Poured Concrete Foundation and Structure Contractors
 23812 Structural Steel and Precast Concrete Contractors
 238120 Structural Steel and Precast Concrete Contractors
 23813 Framing Contractors
 238130 Framing Contractors
 23814 Masonry Contractors
 238140 Masonry Contractors
 23815 Glass and Glazing Contractors
 238150 Glass and Glazing Contractors
 23816 Roofing Contractors
 238160 Roofing Contractors
 23817 Siding Contractors
 238170 Siding Contractors
 23819 Other Foundation, Structure, and Building Exterior Contractors
 238190 Other Foundation, Structure, and Building Exterior Contractors
 2382 Building Equipment Contractors
 23821 Electrical Contractors
 238210 Electrical Contractors
 23822 Plumbing, Heating, and Air-Conditioning Contractors
 238220 Plumbing, Heating, and Air-Conditioning Contractors
 23829 Other Building Equipment Contractors
 238290 Other Building Equipment Contractors
 2383 Building Finishing Contractors
 23831 Drywall and Insulation Contractors
 238310 Drywall and Insulation Contractors
 23832 Painting and Wall Covering Contractors
 238320 Painting and Wall Covering Contractors
 23833 Flooring Contractors
 238330 Flooring Contractors
 23834 Tile and Terrazzo Contractors
 238340 Tile and Terrazzo Contractors

23835 Finish Carpentry Contractors
238350 Finish Carpentry Contractors
23839 Other Building Finishing Contractors
238390 Other Building Finishing Contractors
2389 Other Specialty Trade Contractors
23891 Site Preparation Contractors
238910 Site Preparation Contractors
23899 All Other Specialty Trade Contractors
238990 All Other Specialty Trade Contractors

31-33 Manufacturing

3149 Other Textile Product Mills
31491 Textile Bag and Canvas Mills
314911 Textile Bag Mills
314912 Canvas and Related Product Mills
31499 All Other Textile Product Mills
314991 Rope, Cordage, and Twine Mills
314992 Tire Cord and Tire Fabric Mills
314999 All Other Miscellaneous Textile Product Mills
315 Apparel Manufacturing
3151 Apparel Knitting Mills
31511 Hosiery and Sock Mills
315111 Sheer Hosiery Mills
315119 Other Hosiery and Sock Mills
31519 Other Apparel Knitting Mills
315191 Outerwear Knitting Mills
315192 Underwear and Nightwear Knitting Mills
3152 Cut and Sew Apparel Manufacturing
31521 Cut and Sew Apparel Contractors
315211 Men's and Boys' Cut and Sew Apparel Contractors
315212 Women's, Girls', and Infants' Cut and Sew Apparel Contractors
31522 Men's and Boys' Cut and Sew Apparel Manufacturing
315221 Men's and Boys' Cut and Sew Underwear and Nightwear Manufacturing
315222 Men's and Boys' Cut and Sew Suit, Coat, and Overcoat Manufacturing
315223 Men's and Boys' Cut and Sew Shirt (except Work Shirt) Manufacturing
315224 Men's and Boys' Cut and Sew Trouser, Slack, and Jean Manufacturing
315225 Men's and Boys' Cut and Sew Work Clothing Manufacturing
315228 Men's and Boys' Cut and Sew Other Outerwear Manufacturing
31523 Women's and Girls' Cut and Sew Apparel Manufacturing
315231 Women's and Girls' Cut and Sew Lingerie, Loungewear, and Nightwear Manufacturing
315232 Women's and Girls' Cut and Sew Blouse and Shirt Manufacturing
315233 Women's and Girls' Cut and Sew Dress Manufacturing
315234 Women's and Girls' Cut and Sew Suit, Coat, Tailored Jacket, and Skirt Manufacturing
315239 Women's and Girls' Cut and Sew Other Outerwear Manufacturing
31529 Other Cut and Sew Apparel Manufacturing
315291 Infants' Cut and Sew Apparel Manufacturing

315292 Fur and Leather Apparel Manufacturing
 315299 All Other Cut and Sew Apparel Manufacturing
 3159 Apparel Accessories and Other Apparel Manufacturing
 31599 Apparel Accessories and Other Apparel Manufacturing
 315991 Hat, Cap, and Millinery Manufacturing
 315992 Glove and Mitten Manufacturing
 315993 Men's and Boys' Neckwear Manufacturing
 315999 Other Apparel Accessories and Other Apparel Manufacturing
 316 Leather and Allied Product Manufacturing
 3161 Leather and Hide Tanning and Finishing
 31611 Leather and Hide Tanning and Finishing
 316110 Leather and Hide Tanning and Finishing
 3162 Footwear Manufacturing
 31621 Footwear Manufacturing
 316211 Rubber and Plastics Footwear Manufacturing
 316212 House Slipper Manufacturing
 316213 Men's Footwear (except Athletic) Manufacturing
 316214 Women's Footwear (except Athletic) Manufacturing
 316219 Other Footwear Manufacturing
 3169 Other Leather and Allied Product Manufacturing
 31699 Other Leather and Allied Product Manufacturing
 316991 Luggage Manufacturing
 316992 Women's Handbag and Purse Manufacturing
 316993 Personal Leather Good (except Women's Handbag and Purse) Manufacturing
 316999 All Other Leather Good Manufacturing
 321 Wood Product Manufacturing
 3211 Sawmills and Wood Preservation
 32111 Sawmills and Wood Preservation
 321113 Sawmills
 321114 Wood Preservation
 3212 Veneer, Plywood, and Engineered Wood Product Manufacturing
 32121 Veneer, Plywood, and Engineered Wood Product Manufacturing
 321211 Hardwood Veneer and Plywood Manufacturing
 321212 Softwood Veneer and Plywood Manufacturing
 321213 Engineered Wood Member (except Truss) Manufacturing
 321214 Truss Manufacturing
 321219 Reconstituted Wood Product Manufacturing
 3219 Other Wood Product Manufacturing
 32191 Millwork
 321911 Wood Window and Door Manufacturing
 321912 Cut Stock, Resawing Lumber, and Planing
 321918 Other Millwork (including Flooring)
 32192 Wood Container and Pallet Manufacturing
 321920 Wood Container and Pallet Manufacturing
 32199 All Other Wood Product Manufacturing
 321991 Manufactured Home (Mobile Home) Manufacturing

- 321992 Prefabricated Wood Building Manufacturing
- 321999 All Other Miscellaneous Wood Product Manufacturing
- 322 Paper Manufacturing
- 3221 Pulp, Paper, and Paperboard Mills
- 32211 Pulp Mills
- 322110 Pulp Mills
- 32212 Paper Mills
- 322121 Paper (except Newsprint) Mills
- 322122 Newsprint Mills
- 32213 Paperboard Mills
- 322130 Paperboard Mills
- 3222 Converted Paper Product Manufacturing
- 32221 Paperboard Container Manufacturing
- 322211 Corrugated and Solid Fiber Box Manufacturing
- 322212 Folding Paperboard Box Manufacturing
- 322213 Setup Paperboard Box Manufacturing
- 322214 Fiber Can, Tube, Drum, and Similar Products Manufacturing
- 322215 Nonfolding Sanitary Food Container Manufacturing
- 32222 Paper Bag and Coated and Treated Paper Manufacturing
- 322221 Coated and Laminated Packaging Paper and Plastics Film Manufacturing
- 322222 Coated and Laminated Paper Manufacturing
- 322223 Plastics, Foil, and Coated Paper Bag Manufacturing
- 322224 Uncoated Paper and Multiwall Bag Manufacturing
- 322225 Laminated Aluminum Foil Manufacturing for Flexible Packaging Uses
- 322226 Surface-Coated Paperboard Manufacturing
- 32223 Stationery Product Manufacturing
- 322231 Die-Cut Paper and Paperboard Office Supplies Manufacturing
- 322232 Envelope Manufacturing
- 322233 Stationery, Tablet, and Related Product Manufacturing
- 32229 Other Converted Paper Product Manufacturing
- 322291 Sanitary Paper Product Manufacturing
- 322299 All Other Converted Paper Product Manufacturing
- 323 Printing and Related Support Activities
- 3231 Printing and Related Support Activities
- 32311 Printing
- 323110 Commercial Lithographic Printing
- 323111 Commercial Gravure Printing
- 323112 Commercial Flexographic Printing
- 323113 Commercial Screen Printing
- 323114 Quick Printing
- 323115 Digital Printing
- 323116 Manifold Business Forms Printing
- 323117 Books Printing
- 323118 Blankbook, Looseleaf Binders, and Devices Manufacturing
- 323119 Other Commercial Printing
- 32312 Support Activities for Printing

- 323121 Tradebinding and Related Work
- 323122 Prepress Services
- 324 Petroleum and Coal Products Manufacturing
- 3241 Petroleum and Coal Products Manufacturing
- 32411 Petroleum Refineries
- 324110 Petroleum Refineries
- 32412 Asphalt Paving, Roofing, and Saturated Materials Manufacturing
- 324121 Asphalt Paving Mixture and Block Manufacturing
- 324122 Asphalt Shingle and Coating Materials Manufacturing
- 32419 Other Petroleum and Coal Products Manufacturing
- 324191 Petroleum Lubricating Oil and Grease Manufacturing
- 324199 All Other Petroleum and Coal Products Manufacturing
- 325 Chemical Manufacturing
- 3251 Basic Chemical Manufacturing
- 32511 Petrochemical Manufacturing
- 325110 Petrochemical Manufacturing
- 32512 Industrial Gas Manufacturing
- 325120 Industrial Gas Manufacturing
- 32513 Synthetic Dye and Pigment Manufacturing
- 325131 Inorganic Dye and Pigment Manufacturing
- 325132 Synthetic Organic Dye and Pigment Manufacturing
- 32518 Other Basic Inorganic Chemical Manufacturing
- 325181 Alkalies and Chlorine Manufacturing
- 325182 Carbon Black Manufacturing
- 325188 All Other Basic Inorganic Chemical Manufacturing
- 32519 Other Basic Organic Chemical Manufacturing
- 325191 Gum and Wood Chemical Manufacturing
- 325192 Cyclic Crude and Intermediate Manufacturing
- 325193 Ethyl Alcohol Manufacturing
- 325199 All Other Basic Organic Chemical Manufacturing
- 3252 Resin, Synthetic Rubber, and Artificial Synthetic Fibers and Filaments Manufacturing
- 32521 Resin and Synthetic Rubber Manufacturing
- 325211 Plastics Material and Resin Manufacturing
- 325212 Synthetic Rubber Manufacturing
- 32522 Artificial and Synthetic Fibers and Filaments Manufacturing
- 325221 Cellulosic Organic Fiber Manufacturing
- 325222 Noncellulosic Organic Fiber Manufacturing
- 3253 Pesticide, Fertilizer, and Other Agricultural Chemical Manufacturing
- 32531 Fertilizer Manufacturing
- 325311 Nitrogenous Fertilizer Manufacturing
- 325312 Phosphatic Fertilizer Manufacturing
- 325314 Fertilizer (Mixing Only) Manufacturing
- 32532 Pesticide and Other Agricultural Chemical Manufacturing
- 325320 Pesticide and Other Agricultural Chemical Manufacturing
- 3255 Paint, Coating, and Adhesive Manufacturing
- 32551 Paint and Coating Manufacturing

325510 Paint and Coating Manufacturing
 32552 Adhesive Manufacturing
 325520 Adhesive Manufacturing
 3256 Soap, Cleaning Compound, and Toilet Preparation Manufacturing
 32561 Soap and Cleaning Compound Manufacturing
 325611 Soap and Other Detergent Manufacturing
 325612 Polish and Other Sanitation Good Manufacturing
 325613 Surface Active Agent Manufacturing
 32562 Toilet Preparation Manufacturing
 325620 Toilet Preparation Manufacturing
 3259 Other Chemical Product and Preparation Manufacturing
 32591 Printing Ink Manufacturing
 325910 Printing Ink Manufacturing
 32592 Explosives Manufacturing
 325920 Explosives Manufacturing
 32599 All Other Chemical Product and Preparation Manufacturing
 325991 Custom Compounding of Purchased Resins
 325992 Photographic Film, Paper, Plate, and Chemical Manufacturing
 325998 All Other Miscellaneous Chemical Product and Preparation Manufacturing
 326 Plastics and Rubber Products Manufacturing
 3261 Plastics Product Manufacturing
 32611 Plastics Packaging Materials and Unlaminated Film and Sheet Manufacturing
 326111 Plastics Bag Manufacturing
 326112 Plastics Packaging Film and Sheet (including Laminated) Manufacturing
 326113 Unlaminated Plastics Film and Sheet (except Packaging) Manufacturing
 32612 Plastics Pipe, Pipe Fitting, and Unlaminated Profile Shape Manufacturing
 326121 Unlaminated Plastics Profile Shape Manufacturing
 326122 Plastics Pipe and Pipe Fitting Manufacturing
 32613 Laminated Plastics Plate, Sheet (except Packaging), and Shape Manufacturing
 326130 Laminated Plastics Plate, Sheet (except Packaging), and Shape Manufacturing
 32614 Polystyrene Foam Product Manufacturing
 326140 Polystyrene Foam Product Manufacturing
 32615 Urethane and Other Foam Product (except Polystyrene) Manufacturing
 326150 Urethane and Other Foam Product (except Polystyrene) Manufacturing
 32616 Plastics Bottle Manufacturing
 326160 Plastics Bottle Manufacturing
 32619 Other Plastics Product Manufacturing
 326191 Plastics Plumbing Fixture Manufacturing
 326192 Resilient Floor Covering Manufacturing
 326199 All Other Plastics Product Manufacturing
 3262 Rubber Product Manufacturing
 32621 Tire Manufacturing
 326211 Tire Manufacturing (except Retreading)
 326212 Tire Retreading
 32622 Rubber and Plastics Hoses and Belting Manufacturing
 326220 Rubber and Plastics Hoses and Belting Manufacturing

32629 Other Rubber Product Manufacturing
 326291 Rubber Product Manufacturing for Mechanical Use
 326299 All Other Rubber Product Manufacturing
 327 Nonmetallic Mineral Product Manufacturing
 3271 Clay Product and Refractory Manufacturing
 32711 Pottery, Ceramics, and Plumbing Fixture Manufacturing
 327111 Vitreous China Plumbing Fixture and China and Earthenware Bathroom Accessories Manufacturing
 327112 Vitreous China, Fine Earthenware, and Other Pottery Product Manufacturing
 327113 Porcelain Electrical Supply Manufacturing
 32712 Clay Building Material and Refractories Manufacturing
 327121 Brick and Structural Clay Tile Manufacturing
 327122 Ceramic Wall and Floor Tile Manufacturing
 327123 Other Structural Clay Product Manufacturing
 327124 Clay Refractory Manufacturing
 327125 Nonclay Refractory Manufacturing
 3272 Glass and Glass Product Manufacturing
 32721 Glass and Glass Product Manufacturing
 327211 Flat Glass Manufacturing
 327212 Other Pressed and Blown Glass and Glassware Manufacturing
 327213 Glass Container Manufacturing
 327215 Glass Product Manufacturing Made of Purchased Glass
 3273 Cement and Concrete Product Manufacturing
 32731 Cement Manufacturing
 327310 Cement Manufacturing
 32732 Ready-Mix Concrete Manufacturing
 327320 Ready-Mix Concrete Manufacturing
 32733 Concrete Pipe, Brick, and Block Manufacturing
 327331 Concrete Block and Brick Manufacturing
 327332 Concrete Pipe Manufacturing
 32739 Other Concrete Product Manufacturing
 327390 Other Concrete Product Manufacturing
 3274 Lime and Gypsum Product Manufacturing
 32741 Lime Manufacturing
 327410 Lime Manufacturing
 32742 Gypsum Product Manufacturing
 327420 Gypsum Product Manufacturing
 3279 Other Nonmetallic Mineral Product Manufacturing
 32791 Abrasive Product Manufacturing
 327910 Abrasive Product Manufacturing
 32799 All Other Nonmetallic Mineral Product Manufacturing
 327991 Cut Stone and Stone Product Manufacturing
 327992 Ground or Treated Mineral and Earth Manufacturing
 327993 Mineral Wool Manufacturing
 327999 All Other Miscellaneous Nonmetallic Mineral Product Manufacturing
 331 Primary Metal Manufacturing

- 3311 Iron and Steel Mills and Ferroalloy Manufacturing
- 33111 Iron and Steel Mills and Ferroalloy Manufacturing
- 331111 Iron and Steel Mills
- 331112 Electrometallurgical Ferroalloy Product Manufacturing
- 3312 Steel Product Manufacturing from Purchased Steel
- 33121 Iron and Steel Pipe and Tube Manufacturing from Purchased Steel
- 331210 Iron and Steel Pipe and Tube Manufacturing from Purchased Steel
- 33122 Rolling and Drawing of Purchased Steel
- 331221 Rolled Steel Shape Manufacturing
- 331222 Steel Wire Drawing
- 3313 Alumina and Aluminum Production and Processing
- 33131 Alumina and Aluminum Production and Processing
- 331311 Alumina Refining
- 331312 Primary Aluminum Production
- 331314 Secondary Smelting and Alloying of Aluminum
- 331315 Aluminum Sheet, Plate, and Foil Manufacturing
- 331316 Aluminum Extruded Product Manufacturing
- 331319 Other Aluminum Rolling and Drawing
- 3314 Nonferrous Metal (except Aluminum) Production and Processing
- 33141 Nonferrous Metal (except Aluminum) Smelting and Refining
- 331411 Primary Smelting and Refining of Copper
- 331419 Primary Smelting and Refining of Nonferrous Metal (except Copper and Aluminum)
- 33142 Copper Rolling, Drawing, Extruding, and Alloying
- 331421 Copper Rolling, Drawing, and Extruding
- 331422 Copper Wire (except Mechanical) Drawing
- 331423 Secondary Smelting, Refining, and Alloying of Copper
- 33149 Nonferrous Metal (except Copper and Aluminum) Rolling, Drawing, Extruding, and Alloying
- 331491 Nonferrous Metal (except Copper and Aluminum) Rolling, Drawing, and Extruding
- 331492 Secondary Smelting, Refining, and Alloying of Nonferrous Metal (except Copper and Aluminum)
- 3315 Foundries
- 33151 Ferrous Metal Foundries
- 331511 Iron Foundries
- 331512 Steel Investment Foundries
- 331513 Steel Foundries (except Investment)
- 33152 Nonferrous Metal Foundries
- 331521 Aluminum Die-Casting Foundries
- 331522 Nonferrous (except Aluminum) Die-Casting Foundries
- 331524 Aluminum Foundries (except Die-Casting)
- 331525 Copper Foundries (except Die-Casting)
- 331528 Other Nonferrous Foundries (except Die-Casting)
- 332 Fabricated Metal Product Manufacturing
- 3321 Forging and Stamping
- 33211 Forging and Stamping
- 332111 Iron and Steel Forging

332112 Nonferrous Forging
 332114 Custom Roll Forming
 332115 Crown and Closure Manufacturing
 332116 Metal Stamping
 332117 Powder Metallurgy Part Manufacturing
 3322 Cutlery and Handtool Manufacturing
 33221 Cutlery and Handtool Manufacturing
 332211 Cutlery and Flatware (except Precious) Manufacturing
 332212 Hand and Edge Tool Manufacturing
 332213 Saw Blade and Handsaw Manufacturing
 332214 Kitchen Utensil, Pot, and Pan Manufacturing
 3323 Architectural and Structural Metals Manufacturing
 33231 Plate Work and Fabricated Structural Product Manufacturing
 332311 Prefabricated Metal Building and Component Manufacturing
 332312 Fabricated Structural Metal Manufacturing
 332313 Plate Work Manufacturing
 33232 Ornamental and Architectural Metal Products Manufacturing
 332321 Metal Window and Door Manufacturing
 332322 Sheet Metal Work Manufacturing
 332323 Ornamental and Architectural Metal Work Manufacturing
 3324 Boiler, Tank, and Shipping Container Manufacturing
 33241 Power Boiler and Heat Exchanger Manufacturing
 332410 Power Boiler and Heat Exchanger Manufacturing
 33242 Metal Tank (Heavy Gauge) Manufacturing
 332420 Metal Tank (Heavy Gauge) Manufacturing
 33243 Metal Can, Box, and Other Metal Container (Light Gauge) Manufacturing
 332431 Metal Can Manufacturing
 332439 Other Metal Container Manufacturing
 3325 Hardware Manufacturing
 33251 Hardware Manufacturing
 332510 Hardware Manufacturing
 3326 Spring and Wire Product Manufacturing
 33261 Spring and Wire Product Manufacturing
 332611 Spring (Heavy Gauge) Manufacturing
 332612 Spring (Light Gauge) Manufacturing
 332618 Other Fabricated Wire Product Manufacturing
 3327 Machine Shops; Turned Product; and Screw, Nut, and Bolt Manufacturing
 33271 Machine Shops
 332710 Machine Shops
 33272 Turned Product and Screw, Nut, and Bolt Manufacturing
 332721 Precision Turned Product Manufacturing
 332722 Bolt, Nut, Screw, Rivet, and Washer Manufacturing
 3328 Coating, Engraving, Heat Treating, and Allied Activities
 33281 Coating, Engraving, Heat Treating, and Allied Activities
 332811 Metal Heat Treating

332812 Metal Coating, Engraving (except Jewelry and Silverware), and Allied Services to Manufacturers
 332813 Electroplating, Plating, Polishing, Anodizing, and Coloring
 3329 Other Fabricated Metal Product Manufacturing
 33291 Metal Valve Manufacturing
 332911 Industrial Valve Manufacturing
 332912 Fluid Power Valve and Hose Fitting Manufacturing
 332913 Plumbing Fixture Fitting and Trim Manufacturing
 332919 Other Metal Valve and Pipe Fitting Manufacturing
 33299 All Other Fabricated Metal Product Manufacturing
 332991 Ball and Roller Bearing Manufacturing
 332992 Small Arms Ammunition Manufacturing
 332993 Ammunition (except Small Arms) Manufacturing
 332994 Small Arms Manufacturing
 332995 Other Ordnance and Accessories Manufacturing
 332996 Fabricated Pipe and Pipe Fitting Manufacturing
 332997 Industrial Pattern Manufacturing
 332998 Enameled Iron and Metal Sanitary Ware Manufacturing
 332999 All Other Miscellaneous Fabricated Metal Product Manufacturing
 333 Machinery Manufacturing
 3331 Agriculture, Construction, and Mining Machinery Manufacturing
 33311 Agricultural Implement Manufacturing
 333111 Farm Machinery and Equipment Manufacturing
 333112 Lawn and Garden Tractor and Home Lawn and Garden Equipment Manufacturing
 33312 Construction Machinery Manufacturing
 333120 Construction Machinery Manufacturing
 33313 Mining and Oil and Gas Field Machinery Manufacturing
 333131 Mining Machinery and Equipment Manufacturing
 333132 Oil and Gas Field Machinery and Equipment Manufacturing
 3332 Industrial Machinery Manufacturing
 33321 Sawmill and Woodworking Machinery Manufacturing
 333210 Sawmill and Woodworking Machinery Manufacturing
 33322 Plastics and Rubber Industry Machinery Manufacturing
 333220 Plastics and Rubber Industry Machinery Manufacturing
 33329 Other Industrial Machinery Manufacturing
 333291 Paper Industry Machinery Manufacturing
 333292 Textile Machinery Manufacturing
 333293 Printing Machinery and Equipment Manufacturing
 333294 Food Product Machinery Manufacturing
 333295 Semiconductor Machinery Manufacturing
 333298 All Other Industrial Machinery Manufacturing
 3333 Commercial and Service Industry Machinery Manufacturing
 33331 Commercial and Service Industry Machinery Manufacturing
 333311 Automatic Vending Machine Manufacturing
 333312 Commercial Laundry, Drycleaning, and Pressing Machine Manufacturing
 333313 Office Machinery Manufacturing

333314 Optical Instrument and Lens Manufacturing
 333315 Photographic and Photocopying Equipment Manufacturing
 333319 Other Commercial and Service Industry Machinery Manufacturing
 3334 Ventilation, Heating, Air-Conditioning, and Commercial Refrigeration Equipment Manufacturing
 33341 Ventilation, Heating, Air-Conditioning, and Commercial Refrigeration Equipment Manufacturing
 333411 Air Purification Equipment Manufacturing
 333412 Industrial and Commercial Fan and Blower Manufacturing
 333414 Heating Equipment (except Warm Air Furnaces) Manufacturing
 333415 Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing
 3335 Metalworking Machinery Manufacturing
 33351 Metalworking Machinery Manufacturing
 333511 Industrial Mold Manufacturing
 333512 Machine Tool (Metal Cutting Types) Manufacturing
 333513 Machine Tool (Metal Forming Types) Manufacturing
 333514 Special Die and Tool, Die Set, Jig, and Fixture Manufacturing
 333515 Cutting Tool and Machine Tool Accessory Manufacturing
 333516 Rolling Mill Machinery and Equipment Manufacturing
 333518 Other Metalworking Machinery Manufacturing
 3336 Engine, Turbine, and Power Transmission Equipment Manufacturing
 33361 Engine, Turbine, and Power Transmission Equipment Manufacturing
 333611 Turbine and Turbine Generator Set Units Manufacturing
 333612 Speed Changer, Industrial High-Speed Drive, and Gear Manufacturing
 333613 Mechanical Power Transmission Equipment Manufacturing
 333618 Other Engine Equipment Manufacturing
 3339 Other General Purpose Machinery Manufacturing
 33391 Pump and Compressor Manufacturing
 333911 Pump and Pumping Equipment Manufacturing
 333912 Air and Gas Compressor Manufacturing
 333913 Measuring and Dispensing Pump Manufacturing
 33392 Material Handling Equipment Manufacturing
 333921 Elevator and Moving Stairway Manufacturing
 333922 Conveyor and Conveying Equipment Manufacturing
 333923 Overhead Traveling Crane, Hoist, and Monorail System Manufacturing
 333924 Industrial Truck, Tractor, Trailer, and Stacker Machinery Manufacturing
 33399 All Other General Purpose Machinery Manufacturing
 333991 Power-Driven Handtool Manufacturing
 333992 Welding and Soldering Equipment Manufacturing
 333993 Packaging Machinery Manufacturing
 333994 Industrial Process Furnace and Oven Manufacturing
 333995 Fluid Power Cylinder and Actuator Manufacturing
 333996 Fluid Power Pump and Motor Manufacturing
 333997 Scale and Balance (except Laboratory) Manufacturing
 333999 All Other Miscellaneous General Purpose Machinery Manufacturing

- 334 Computer and Electronic Product Manufacturing
- 3341 Computer and Peripheral Equipment Manufacturing
- 33411 Computer and Peripheral Equipment Manufacturing
- 334111 Electronic Computer Manufacturing
- 334112 Computer Storage Device Manufacturing
- 334113 Computer Terminal Manufacturing
- 334119 Other Computer Peripheral Equipment Manufacturing
- 3342 Communications Equipment Manufacturing
- 33421 Telephone Apparatus Manufacturing
- 334210 Telephone Apparatus Manufacturing
- 33422 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing
- 334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing
- 33429 Other Communications Equipment Manufacturing
- 334290 Other Communications Equipment Manufacturing
- 3343 Audio and Video Equipment Manufacturing
- 33431 Audio and Video Equipment Manufacturing
- 334310 Audio and Video Equipment Manufacturing
- 3344 Semiconductor and Other Electronic Component Manufacturing
- 33441 Semiconductor and Other Electronic Component Manufacturing
- 334411 Electron Tube Manufacturing
- 334412 Bare Printed Circuit Board Manufacturing
- 334413 Semiconductor and Related Device Manufacturing
- 334414 Electronic Capacitor Manufacturing
- 334415 Electronic Resistor Manufacturing
- 334416 Electronic Coil, Transformer, and Other Inductor Manufacturing
- 334417 Electronic Connector Manufacturing
- 334418 Printed Circuit Assembly (Electronic Assembly) Manufacturing
- 334419 Other Electronic Component Manufacturing
- 3345 Navigational, Measuring, Electromedical, and Control Instruments Manufacturing
- 33451 Navigational, Measuring, Electromedical, and Control Instruments Manufacturing
- 334510 Electromedical and Electrotherapeutic Apparatus Manufacturing
- 334511 Search, Detection, Navigation, Guidance, Aeronautical, and Nautical System and Instrument Manufacturing
- 334512 Automatic Environmental Control Manufacturing for Residential, Commercial, and Appliance Use
- 334513 Instruments and Related Products Manufacturing for Measuring, Displaying, and Controlling Industrial Process Variables
- 334514 Totalizing Fluid Meter and Counting Device Manufacturing
- 334515 Instrument Manufacturing for Measuring and Testing Electricity and Electrical Signals
- 334516 Analytical Laboratory Instrument Manufacturing
- 334517 Irradiation Apparatus Manufacturing
- 334518 Watch, Clock, and Part Manufacturing
- 334519 Other Measuring and Controlling Device Manufacturing
- 3346 Manufacturing and Reproducing Magnetic and Optical Media

- 33461 Manufacturing and Reproducing Magnetic and Optical Media
- 334611 Software Reproducing
- 334612 Prerecorded Compact Disc (except Software), Tape, and Record Reproducing
- 334613 Magnetic and Optical Recording Media Manufacturing
- 335 Electrical Equipment, Appliance, and Component Manufacturing
- 3351 Electric Lighting Equipment Manufacturing
- 33511 Electric Lamp Bulb and Part Manufacturing
- 335110 Electric Lamp Bulb and Part Manufacturing
- 33512 Lighting Fixture Manufacturing
- 335121 Residential Electric Lighting Fixture Manufacturing
- 335122 Commercial, Industrial, and Institutional Electric Lighting Fixture Manufacturing
- 335129 Other Lighting Equipment Manufacturing
- 3352 Household Appliance Manufacturing
- 33521 Small Electrical Appliance Manufacturing
- 335211 Electric Housewares and Household Fan Manufacturing
- 335212 Household Vacuum Cleaner Manufacturing
- 33522 Major Appliance Manufacturing
- 335221 Household Cooking Appliance Manufacturing
- 335222 Household Refrigerator and Home Freezer Manufacturing
- 335224 Household Laundry Equipment Manufacturing
- 335228 Other Major Household Appliance Manufacturing
- 3353 Electrical Equipment Manufacturing
- 33531 Electrical Equipment Manufacturing
- 335311 Power, Distribution, and Specialty Transformer Manufacturing
- 335312 Motor and Generator Manufacturing
- 335313 Switchgear and Switchboard Apparatus Manufacturing
- 335314 Relay and Industrial Control Manufacturing
- 3359 Other Electrical Equipment and Component Manufacturing
- 33591 Battery Manufacturing
- 335911 Storage Battery Manufacturing
- 335912 Primary Battery Manufacturing
- 33592 Communication and Energy Wire and Cable Manufacturing
- 335921 Fiber Optic Cable Manufacturing
- 335929 Other Communication and Energy Wire Manufacturing
- 33593 Wiring Device Manufacturing
- 335931 Current-Carrying Wiring Device Manufacturing
- 335932 Noncurrent-Carrying Wiring Device Manufacturing
- 33599 All Other Electrical Equipment and Component Manufacturing
- 335991 Carbon and Graphite Product Manufacturing
- 335999 All Other Miscellaneous Electrical Equipment and Component Manufacturing

- 336 Transportation Equipment Manufacturing
- 3361 Motor Vehicle Manufacturing
- 33611 Automobile and Light Duty Motor Vehicle Manufacturing
- 336111 Automobile Manufacturing
- 336112 Light Truck and Utility Vehicle Manufacturing
- 33612 Heavy Duty Truck Manufacturing
- 336120 Heavy Duty Truck Manufacturing
- 3362 Motor Vehicle Body and Trailer Manufacturing
- 33621 Motor Vehicle Body and Trailer Manufacturing
- 336211 Motor Vehicle Body Manufacturing
- 336212 Truck Trailer Manufacturing
- 336213 Motor Home Manufacturing
- 336214 Travel Trailer and Camper Manufacturing
- 3363 Motor Vehicle Parts Manufacturing
- 33631 Motor Vehicle Gasoline Engine and Engine Parts Manufacturing
- 336311 Carburetor, Piston, Piston Ring, and Valve Manufacturing
- 336312 Gasoline Engine and Engine Parts Manufacturing
- 33632 Motor Vehicle Electrical and Electronic Equipment Manufacturing
- 336321 Vehicular Lighting Equipment Manufacturing
- 336322 Other Motor Vehicle Electrical and Electronic Equipment Manufacturing
- 33633 Motor Vehicle Steering and Suspension Components (except Spring) Manufacturing
- 336330 Motor Vehicle Steering and Suspension Components (except Spring) Manufacturing
- 33634 Motor Vehicle Brake System Manufacturing
- 336340 Motor Vehicle Brake System Manufacturing
- 33635 Motor Vehicle Transmission and Power Train Parts Manufacturing
- 336350 Motor Vehicle Transmission and Power Train Parts Manufacturing
- 33636 Motor Vehicle Seating and Interior Trim Manufacturing
- 336360 Motor Vehicle Seating and Interior Trim Manufacturing
- 33637 Motor Vehicle Metal Stamping
- 336370 Motor Vehicle Metal Stamping
- 33639 Other Motor Vehicle Parts Manufacturing
- 336391 Motor Vehicle Air-Conditioning Manufacturing
- 336399 All Other Motor Vehicle Parts Manufacturing
- 3364 Aerospace Product and Parts Manufacturing
- 33641 Aerospace Product and Parts Manufacturing
- 336411 Aircraft Manufacturing
- 336412 Aircraft Engine and Engine Parts Manufacturing
- 336413 Other Aircraft Parts and Auxiliary Equipment Manufacturing
- 336414 Guided Missile and Space Vehicle Manufacturing
- 336415 Guided Missile and Space Vehicle Propulsion Unit and Propulsion Unit Parts Manufacturing
- 336419 Other Guided Missile and Space Vehicle Parts and Auxiliary Equipment Manufacturing
- 3365 Railroad Rolling Stock Manufacturing
- 33651 Railroad Rolling Stock Manufacturing

336510 Railroad Rolling Stock Manufacturing
 3366 Ship and Boat Building
 33661 Ship and Boat Building
 336611 Ship Building and Repairing
 336612 Boat Building
 3369 Other Transportation Equipment Manufacturing
 33699 Other Transportation Equipment Manufacturing
 336991 Motorcycle, Bicycle, and Parts Manufacturing
 336992 Military Armored Vehicle, Tank, and Tank Component Manufacturing
 336999 All Other Transportation Equipment Manufacturing
 337 Furniture and Related Product Manufacturing
 3371 Household and Institutional Furniture and Kitchen Cabinet Manufacturing
 33711 Wood Kitchen Cabinet and Countertop Manufacturing
 337110 Wood Kitchen Cabinet and Countertop Manufacturing
 33712 Household and Institutional Furniture Manufacturing
 337121 Upholstered Household Furniture Manufacturing
 337122 Nonupholstered Wood Household Furniture Manufacturing
 337124 Metal Household Furniture Manufacturing
 337125 Household Furniture (except Wood and Metal) Manufacturing
 337127 Institutional Furniture Manufacturing
 337129 Wood Television, Radio, and Sewing Machine Cabinet Manufacturing
 3372 Office Furniture (including Fixtures) Manufacturing
 33721 Office Furniture (including Fixtures) Manufacturing
 337211 Wood Office Furniture Manufacturing
 337212 Custom Architectural Woodwork and Millwork Manufacturing
 337214 Office Furniture (except Wood) Manufacturing
 337215 Showcase, Partition, Shelving, and Locker Manufacturing
 3379 Other Furniture Related Product Manufacturing
 33791 Mattress Manufacturing
 337910 Mattress Manufacturing
 33792 Blind and Shade Manufacturing
 337920 Blind and Shade Manufacturing
 339 Miscellaneous Manufacturing
 3391 Medical Equipment and Supplies Manufacturing
 33911 Medical Equipment and Supplies Manufacturing
 339111 Laboratory Apparatus and Furniture Manufacturing
 339112 Surgical and Medical Instrument Manufacturing
 339113 Surgical Appliance and Supplies Manufacturing
 339114 Dental Equipment and Supplies Manufacturing
 339115 Ophthalmic Goods Manufacturing
 339116 Dental Laboratories
 3399 Other Miscellaneous Manufacturing
 33991 Jewelry and Silverware Manufacturing
 339911 Jewelry (except Costume) Manufacturing
 339912 Silverware and Hollowware Manufacturing
 339913 Jewelers' Material and Lapidary Work Manufacturing

- 339914 Costume Jewelry and Novelty Manufacturing
- 33992 Sporting and Athletic Goods Manufacturing
- 339920 Sporting and Athletic Goods Manufacturing
- 33993 Doll, Toy, and Game Manufacturing
- 339931 Doll and Stuffed Toy Manufacturing
- 339932 Game, Toy, and Children's Vehicle Manufacturing
- 33994 Office Supplies (except Paper) Manufacturing
- 339941 Pen and Mechanical Pencil Manufacturing
- 339942 Lead Pencil and Art Good Manufacturing
- 339943 Marking Device Manufacturing
- 339944 Carbon Paper and Inked Ribbon Manufacturing
- 33995 Sign Manufacturing
- 339950 Sign Manufacturing
- 33999 All Other Miscellaneous Manufacturing
- 339991 Gasket, Packing, and Sealing Device Manufacturing
- 339992 Musical Instrument Manufacturing
- 339993 Fastener, Button, Needle, and Pin Manufacturing
- 339994 Broom, Brush, and Mop Manufacturing
- 339995 Burial Casket Manufacturing
- 339999 All Other Miscellaneous Manufacturing

48-49 Transportation and Warehousing

- 481 Air Transportation
- 4811 Scheduled Air Transportation
- 48111 Scheduled Air Transportation
- 481111 Scheduled Passenger Air Transportation
- 481112 Scheduled Freight Air Transportation
- 4812 Nonscheduled Air Transportation
- 48121 Nonscheduled Air Transportation
- 481211 Nonscheduled Chartered Passenger Air Transportation
- 481212 Nonscheduled Chartered Freight Air Transportation
- 481219 Other Nonscheduled Air Transportation
- 482 Rail Transportation
- 4821 Rail Transportation
- 48211 Rail Transportation
- 482111 Line-Haul Railroads
- 482112 Short Line Railroads
- 483 Water Transportation
- 4831 Deep Sea, Coastal, and Great Lakes Water Transportation
- 48311 Deep Sea, Coastal, and Great Lakes Water Transportation
- 483111 Deep Sea Freight Transportation
- 483112 Deep Sea Passenger Transportation
- 483113 Coastal and Great Lakes Freight Transportation
- 483114 Coastal and Great Lakes Passenger Transportation
- 4832 Inland Water Transportation
- 48321 Inland Water Transportation

483211 Inland Water Freight Transportation
 483212 Inland Water Passenger Transportation
 484 Truck Transportation
 4841 General Freight Trucking
 48411 General Freight Trucking, Local
 484110 General Freight Trucking, Local
 48412 General Freight Trucking, Long-Distance
 484121 General Freight Trucking, Long-Distance, Truckload
 484122 General Freight Trucking, Long-Distance, Less Than Truckload
 4842 Specialized Freight Trucking
 48421 Used Household and Office Goods Moving
 484210 Used Household and Office Goods Moving
 48422 Specialized Freight (except Used Goods) Trucking, Local
 484220 Specialized Freight (except Used Goods) Trucking, Local
 48423 Specialized Freight (except Used Goods) Trucking, Long-Distance
 484230 Specialized Freight (except Used Goods) Trucking, Long-Distance
 485 Transit and Ground Passenger Transportation
 4851 Urban Transit Systems
 48511 Urban Transit Systems
 485111 Mixed Mode Transit Systems
 485112 Commuter Rail Systems
 485113 Bus and Other Motor Vehicle Transit Systems
 485119 Other Urban Transit Systems
 4852 Interurban and Rural Bus Transportation
 48521 Interurban and Rural Bus Transportation
 485210 Interurban and Rural Bus Transportation
 4853 Taxi and Limousine Service
 48531 Taxi Service
 485310 Taxi Service
 48532 Limousine Service
 485320 Limousine Service
 4854 School and Employee Bus Transportation
 48541 School and Employee Bus Transportation
 485410 School and Employee Bus Transportation
 4855 Charter Bus Industry
 48551 Charter Bus Industry
 485510 Charter Bus Industry
 4859 Other Transit and Ground Passenger Transportation
 48599 Other Transit and Ground Passenger Transportation
 485991 Special Needs Transportation
 485999 All Other Transit and Ground Passenger Transportation
 486 Pipeline Transportation
 4861 Pipeline Transportation of Crude Oil
 48611 Pipeline Transportation of Crude Oil
 486110 Pipeline Transportation of Crude Oil
 4862 Pipeline Transportation of Natural Gas

48621 Pipeline Transportation of Natural Gas
 486210 Pipeline Transportation of Natural Gas
 4869 Other Pipeline Transportation
 48691 Pipeline Transportation of Refined Petroleum Products
 486910 Pipeline Transportation of Refined Petroleum Products
 48699 All Other Pipeline Transportation
 486990 All Other Pipeline Transportation
 487 Scenic and Sightseeing Transportation
 4871 Scenic and Sightseeing Transportation, Land
 48711 Scenic and Sightseeing Transportation, Land
 487110 Scenic and Sightseeing Transportation, Land
 4872 Scenic and Sightseeing Transportation, Water
 48721 Scenic and Sightseeing Transportation, Water
 487210 Scenic and Sightseeing Transportation, Water
 4879 Scenic and Sightseeing Transportation, Other
 48799 Scenic and Sightseeing Transportation, Other
 487990 Scenic and Sightseeing Transportation, Other
 488 Support Activities for Transportation
 4881 Support Activities for Air Transportation
 48811 Airport Operations
 488111 Air Traffic Control
 488119 Other Airport Operations
 48819 Other Support Activities for Air Transportation
 488190 Other Support Activities for Air Transportation
 4882 Support Activities for Rail Transportation
 48821 Support Activities for Rail Transportation
 488210 Support Activities for Rail Transportation
 4883 Support Activities for Water Transportation
 48831 Port and Harbor Operations
 488310 Port and Harbor Operations
 48832 Marine Cargo Handling
 488320 Marine Cargo Handling
 48833 Navigational Services to Shipping
 488330 Navigational Services to Shipping
 48839 Other Support Activities for Water Transportation
 488390 Other Support Activities for Water Transportation
 4884 Support Activities for Road Transportation
 48841 Motor Vehicle Towing
 488410 Motor Vehicle Towing
 48849 Other Support Activities for Road Transportation
 488490 Other Support Activities for Road Transportation
 4885 Freight Transportation Arrangement
 48851 Freight Transportation Arrangement
 488510 Freight Transportation Arrangement
 4889 Other Support Activities for Transportation
 48899 Other Support Activities for Transportation

- 488991 Packing and Crating
- 488999 All Other Support Activities for Transportation
- 491 Postal Service
- 4911 Postal Service
- 49111 Postal Service
- 491110 Postal Service
- 492 Couriers and Messengers
- 4921 Couriers
- 49211 Couriers
- 492110 Couriers
- 4922 Local Messengers and Local Delivery
- 49221 Local Messengers and Local Delivery
- 492210 Local Messengers and Local Delivery
- 493 Warehousing and Storage
- 4931 Warehousing and Storage
- 49311 General Warehousing and Storage
- 493110 General Warehousing and Storage
- 49312 Refrigerated Warehousing and Storage
- 493120 Refrigerated Warehousing and Storage
- 49313 Farm Product Warehousing and Storage
- 493130 Farm Product Warehousing and Storage
- 49319 Other Warehousing and Storage
- 493190 Other Warehousing and Storage

54 Professional, Scientific, and Technical Services

- 541 Professional, Scientific, and Technical Services
- 5411 Legal Services
- 54111 Offices of Lawyers
- 541110 Offices of Lawyers
- 54112 Offices of Notaries
- 541120 Offices of Notaries
- 54119 Other Legal Services
- 541191 Title Abstract and Settlement Offices
- 541199 All Other Legal Services
- 5412 Accounting, Tax Preparation, Bookkeeping, and Payroll Services
- 54121 Accounting, Tax Preparation, Bookkeeping, and Payroll Services
- 541211 Offices of Certified Public Accountants
- 541213 Tax Preparation Services
- 541214 Payroll Services
- 541219 Other Accounting Services
- 5413 Architectural, Engineering, and Related Services
- 54131 Architectural Services
- 541310 Architectural Services
- 54132 Landscape Architectural Services
- 541320 Landscape Architectural Services
- 54133 Engineering Services

541330 Engineering Services
54134 Drafting Services
541340 Drafting Services
54135 Building Inspection Services
541350 Building Inspection Services
54136 Geophysical Surveying and Mapping Services
541360 Geophysical Surveying and Mapping Services
54137 Surveying and Mapping (except Geophysical) Services
541370 Surveying and Mapping (except Geophysical) Services
54138 Testing Laboratories
541380 Testing Laboratories
5414 Specialized Design Services
54141 Interior Design Services
541410 Interior Design Services
54142 Industrial Design Services
541420 Industrial Design Services
54143 Graphic Design Services
541430 Graphic Design Services
54149 Other Specialized Design Services
541490 Other Specialized Design Services
5415 Computer Systems Design and Related Services
54151 Computer Systems Design and Related Services
541511 Custom Computer Programming Services
541512 Computer Systems Design Services
541513 Computer Facilities Management Services
541519 Other Computer Related Services
5416 Management, Scientific, and Technical Consulting Services
54161 Management Consulting Services
541611 Administrative Management and General Management Consulting Services
541612 Human Resources and Executive Search Consulting Services
541613 Marketing Consulting Services
541614 Process, Physical Distribution, and Logistics Consulting Services
541618 Other Management Consulting Services
54162 Environmental Consulting Services
541620 Environmental Consulting Services
54169 Other Scientific and Technical Consulting Services
541690 Other Scientific and Technical Consulting Services
5417 Scientific Research and Development Services
54171 Research and Development in the Physical, Engineering, and Life Sciences
541710 Research and Development in the Physical, Engineering, and Life Sciences
54172 Research and Development in the Social Sciences and Humanities
541720 Research and Development in the Social Sciences and Humanities
5418 Advertising and Related Services
54181 Advertising Agencies
541810 Advertising Agencies
54182 Public Relations Agencies

- 541820 Public Relations Agencies
- 54183 Media Buying Agencies
- 541830 Media Buying Agencies
- 54184 Media Representatives
- 541840 Media Representatives
- 54185 Display Advertising
- 541850 Display Advertising
- 54186 Direct Mail Advertising
- 541860 Direct Mail Advertising
- 54187 Advertising Material Distribution Services
- 541870 Advertising Material Distribution Services
- 54189 Other Services Related to Advertising
- 541890 Other Services Related to Advertising
- 5419 Other Professional, Scientific, and Technical Services
- 54191 Marketing Research and Public Opinion Polling
- 541910 Marketing Research and Public Opinion Polling
- 54192 Photographic Services
- 541921 Photography Studios, Portrait
- 541922 Commercial Photography
- 54193 Translation and Interpretation Services
- 541930 Translation and Interpretation Services
- 54194 Veterinary Services
- 541940 Veterinary Services
- 54199 All Other Professional, Scientific, and Technical Services
- 541990 All Other Professional, Scientific, and Technical Services

56 Administrative and Support and Waste Management and Remediation Services

- 561 Administrative and Support Services
- 5611 Office Administrative Services
- 56111 Office Administrative Services
- 561110 Office Administrative Services
- 5612 Facilities Support Services
- 56121 Facilities Support Services
- 561210 Facilities Support Services
- 5613 Employment Services
- 56131 Employment Placement Agencies
- 561310 Employment Placement Agencies
- 56132 Temporary Help Services
- 561320 Temporary Help Services
- 56133 Professional Employer Organizations
- 561330 Professional Employer Organizations
- 5614 Business Support Services
- 56141 Document Preparation Services
- 561410 Document Preparation Services
- 56142 Telephone Call Centers
- 561421 Telephone Answering Services

561422 Telemarketing Bureaus
 56143 Business Service Centers
 561431 Private Mail Centers
 561439 Other Business Service Centers (including Copy Shops)
 56144 Collection Agencies
 561440 Collection Agencies
 56145 Credit Bureaus
 561450 Credit Bureaus
 56149 Other Business Support Services
 561491 Repossession Services
 561492 Court Reporting and Stenotype Services
 561499 All Other Business Support Services
 5615 Travel Arrangement and Reservation Services
 56151 Travel Agencies
 561510 Travel Agencies
 56152 Tour Operators
 561520 Tour Operators
 56159 Other Travel Arrangement and Reservation Services
 561591 Convention and Visitors Bureaus
 561599 All Other Travel Arrangement and Reservation Services
 5616 Investigation and Security Services
 56161 Investigation, Guard, and Armored Car Services
 561611 Investigation Services
 561612 Security Guards and Patrol Services
 561613 Armored Car Services
 56162 Security Systems Services
 561621 Security Systems Services (except Locksmiths)
 561622 Locksmiths
 5617 Services to Buildings and Dwellings
 56171 Exterminating and Pest Control Services
 561710 Exterminating and Pest Control Services
 56172 Janitorial Services
 561720 Janitorial Services
 56173 Landscaping Services
 561730 Landscaping Services
 56174 Carpet and Upholstery Cleaning Services
 561740 Carpet and Upholstery Cleaning Services
 56179 Other Services to Buildings and Dwellings
 561790 Other Services to Buildings and Dwellings
 5619 Other Support Services
 56191 Packaging and Labeling Services
 561910 Packaging and Labeling Services
 56192 Convention and Trade Show Organizers
 561920 Convention and Trade Show Organizers
 56199 All Other Support Services
 561990 All Other Support Services

- 562 Waste Management and Remediation Services
 - 5621 Waste Collection
 - 56211 Waste Collection
 - 562111 Solid Waste Collection
 - 562112 Hazardous Waste Collection
 - 562119 Other Waste Collection
 - 5622 Waste Treatment and Disposal
 - 56221 Waste Treatment and Disposal
 - 562211 Hazardous Waste Treatment and Disposal
 - 562212 Solid Waste Landfill
 - 562213 Solid Waste Combustors and Incinerators
 - 562219 Other Nonhazardous Waste Treatment and Disposal
 - 5629 Remediation and Other Waste Management Services
 - 56291 Remediation Services
 - 562910 Remediation Services
 - 56292 Materials Recovery Facilities
 - 562920 Materials Recovery Facilities
 - 56299 All Other Waste Management Services
 - 562991 Septic Tank and Related Services
 - 562998 All Other Miscellaneous Waste Management Services